

Daemen University

Daemen Digital Commons

Public Scholarship

Faculty & Staff Scholarship

2020-1

Is It Time for New York State to Revise Its Village Incorporation Laws? A Background Report on Village Incorporation in New York State

Lisa K. Parshall

Daemen College, lparshal@daemen.edu

Follow this and additional works at: https://digitalcommons.daemen.edu/public_scholarship



Part of the [State and Local Government Law Commons](#)

Recommended Citation

Parshall, Lisa K., "Is It Time for New York State to Revise Its Village Incorporation Laws? A Background Report on Village Incorporation in New York State" (2020). *Public Scholarship*. 13.

https://digitalcommons.daemen.edu/public_scholarship/13

This Article is brought to you for free and open access by the Faculty & Staff Scholarship at Daemen Digital Commons. It has been accepted for inclusion in Public Scholarship by an authorized administrator of Daemen Digital Commons. For more information, please contact jdion@daemen.edu.

Is It Time For New York State to Revise Its Village Incorporation Laws?

A Background Report on Village Incorporation in New York State

Lisa K. Parshall

January 2020

Rockefeller
SUNY
Institute of Government



Photo credit: Martin J. Anisman

ABOUT THE AUTHOR

Lisa Parshall is a professor of political science at Daemen College in Amherst, New York and a public policy fellow at the Rockefeller Institute of Government



Is It Time for New York State to Revise Its Village Incorporation Laws?

Over the past several years, New York State has taken considerable steps to eliminate or reduce the number of local governments — streamlining the law to make it easier for citizens to undertake the process as well as providing financial incentives for communities that undertake consolidations and shared services. Since 2010, the residents of 42 villages have voted on the question of whether to dissolve their village government. This average of 4.7 dissolution votes per year is an increase over the .79 a-year-average in the years 1972-2010.¹ The growing number of villages considering dissolution is attributable to the combined influence of declining populations, growing property tax burdens, and the passage of the New N.Y. Government Reorganization and Citizen Empowerment Act (herein after the Empowerment Act), effective in March 2019, which revised procedures to make it easier for citizens to place dissolution and consolidation on the ballot. While the number of communities considering and voting on dissolution has increased, the rate at which dissolutions have been approved by the voters has declined. That is, 60 percent of proposed village dissolutions brought under the provisions of the Empowerment Act have been rejected at referendum (see *Dissolving Village Government in New York State: A Symbol of a Community in Decline or Government Modernization?*)²

While the Empowerment Act revised the processes for citizen-initiated dissolutions and consolidations, it left the provisions for the incorporation of new villages unchanged. Thus, even as the state has created pressure on and increased incentives for residents to reduce the number of local governments, new villages continue to be created. Moreover, recent village incorporation efforts have been particularly contentious. This report highlights several recent village incorporation controversies, reviews the history of village incorporation patterns and procedures, and compares the incorporation provisions of New York relative to those of other states to ask whether the current state laws governing village incorporation are adequate to addressing the increasingly complex questions which surround local government formation and dissolution. The report concludes that it is time for New York's legislature to look to other states for prospective models that would modernize the municipal incorporation process.

I. Recent Village Incorporation Controversies in New York State

The creation of a village gives self-governing authority to the population of a defined jurisdiction within an otherwise unincorporated area of a town (or towns), establishing a corporate body politic with a separately elected government. In New York's local government structure, comprised of counties, towns, cities, and villages, only village governments can be incorporated and dissolved through purely local action (i.e., through petition and referendum by local residents).³ Unlike the residents of incorporated cities, the residents of incorporated villages remain a part of the town, paying town taxes and voting in town elections, but only residents living within village boundaries may vote in village affairs. Village governments are thus a general service providing municipality within the territory of another general service providing municipality (i.e., the town, or towns in those cases in which an incorporated village lies within the territory of two or more towns). The drawing of jurisdictional boundaries causes residents to develop a psychological attachment to the village that is separate and distinct from their identification with the town. Most importantly, the creation of a village corporation establishes formal authority over the provision of services, land use, zoning, and code enforcement decisions, thereby allowing village residents, through their village government, to directly shape the residential character of the community (i.e., to control population density, pass local laws, enforce codes, and control the level of services and amenities available to residents of the village). Part I examines several recent incorporation efforts, highlighting the various motivations for incorporation and illustrating the complex issues which arise when town residents seek to establish a separate village entity.

Weighing Services and Local Control Against Increased Taxes

Under New York law, only the voters in the prospective village have the right to vote on the incorporation question just as only village voters have a say in the decision to dissolve. The decision of whether or not to incorporate as a village requires residents to weigh the demand for services and enhanced local control against the increased costs and associated taxes necessary to support a separate village government. The incorporation and dissolution of the village of Mastic Beach (town of Brookhaven) illustrates one such contemporary debate in which the demand for more localized control over services led to formation of a village government and its realized costs led to its subsequent dissolution.

Mastic Beach (Town of Brookhaven, Suffolk County)

A beachfront community with a large number of seasonal rental properties, Mastic Beach has long struggled with code enforcement and environmental challenges, including water quality and flooding risks. Arguing that the community's issues were not being adequately addressed by the town, incorporation advocates campaigned to establish a separate village government, arguing that it would afford its residents greater control over issues of local concern, improve services, and better protect

existing property values without any significant increase in local property taxes. Mastic Beach residents voted to incorporate as a village in 2010.

From the beginning, the new village was plagued with internal administrative problems and lingering resentments over the incorporation campaign and debate. Village officials frequently clashed with dissatisfied residents, board meetings became highly contentious affairs, and administrative turnover hampered the smooth functioning of village affairs: the village would have three mayors, six treasurers, five attorneys, and three clerks in its short, six-year span. External events also compounded the new village's woes. Hurricane Irene struck a week after Mastic Beach's incorporation and Superstorm Sandy two years later. The storm surges exacerbated ongoing problems with flooding and poor water quality and worsened the blight of neglected and abandoned ("zombie") homes. Despite federal emergency assistance, many residents were unable to bring their properties up to code or make necessary modifications to defend against future storm damage.

Residents were also increasingly frustrated by village administration costs and higher-than-projected expenditures, particularly after having been promised that incorporation would be "tax neutral." Responding to the pressure from its residents, village officials were forced to pare the budget to the bare bones and struggled to provide basic and vital services. In 2016, overexpenditure on roadwork led to a proposed 125 percent increase in annual property taxes. That same year, Mastic Beach's financial rating was downgraded and the village faced several lawsuits alleging housing discrimination, adding to the village's growing fiscal woes. Frustrated by rising tax bills and administrative disfunction, residents successfully petitioned for a dissolution under the provisions of the Empowerment Act. In November 2016, the residents of Mastic Beach voted to dissolve their village incorporation by a vote of 1,922 to 1,215, making it the largest village to dissolve under the Empowerment Act's provisions to date. Because village residents are responsible for discharging village debt, the approved dissolution resulted in a tax increase for residents of the former village. But the studies which accompanied the formulation of a dissolution plan demonstrated that the tax increases would have been far greater had the village remained incorporated.

The return of Mastic Beach's administration to the town of Brookhaven has been widely regarded as a success.⁴ Town of Brookhaven representatives were active participants in the dissolution study and planning, promising a smooth transition and close consultation with residents of the former village. The town has since made significant progress in the demolition of abandoned or rundown properties to the benefit of adjacent home values and has successfully pursued various financial incentives available from the state. In addition to receiving the former village's municipal aid and the Citizens Empowerment Tax Credit (CETC), which accompanies dissolutions under the Empowerment Act, Brookhaven was awarded a \$20 million state grant for the shared services consolidation plan in 2018 and has worked with state and federal authorities to advance one of the largest sewer projects undertaken in Suffolk County in over three decades. This project is anticipated to have direct economic benefits to former village of the Mastic Beach, allowing for the expansion of its business district.

There are residents who mourn the loss of the village government to be sure. But for others, the village of Mastic Beach's short life span represents an expensive and failed attempt at self-governance — a “cautionary tale” that enhanced local control inevitably entails a price.⁵ Such disagreements over the potential benefits of local control relative to the additional costs of maintaining a separate village government are old and familiar ones. (See the [Historical Case Study: The ‘Da Dude’ Nonsense of Incorporating](#) and [Historical Sidebar: Incorporation Remorse](#)).

Historical Case Study: The ‘Da Dude’ Nonsense of Incorporating

The effort to dissolve the village of Mamaroneck (Westchester County) in 1897 provides a colorful, historical illustration of a lingering dispute over incorporation fueled by resentment over the realized costs of the new village administration. Just two years after its incorporation, a “war” over the continuation of the village government set the “Progressives, who want[ed] to boom the village even if it does cost a little more in taxes,” against the “Conservatives or Reactionaries...working to effect a disincorporation.”

One journalistic account painted a vivid portrait of the clashing viewpoints between the so-called progressives in support of incorporation and the conservatives opposed to the formation of the new village:

“Progressives, hey! Yes, that’s what they call themselves dod-rot ‘em! Come out with their citified ideas and want to make a metropolis of the place. Get into business in the city and think they’re all creation. Town ain’t good enough for ‘em. They make a few dollars and put up a house that a cross between an oil painting and a hen coop, and say the earth is ours b’gosh and the fulness thereof. We must have a marble schoolhouse and a bicycle police squad. Then we’re expected to pay the taxes for their da-dude nonsense. That’s what the trouble’s about.”

Pro-village residents, for their part, distilled incorporation opponents down to an equally unflattering “nutshell”:

“These old fossilized trilobites who were board some time B.C. and died some centuries ago — only you can’t make ‘em believe it — don’t see that we’re way behind the times in this town. Try to do anything that brings the place up to date and there’s a howl fit to rattle the iron gates of hell. These chaps have got a tighter grip on a penny than the ordinary man has on his life and if you offered to make ‘em a present of a barrel of cider they’d refuse for fear they’d have to hire somebody to haul it over to their house. Just because a man who is known to be moderately progressive suggests a plan for the good of the village, they come out of nights to set on their haunches and bay the moon about it. That’s the sort of thing that makes a man sick of living in this village.”

Disincorporation was twice put to a vote in Mamaroneck, first in 1897 and again in 1898, when a 28-person majority voted to continue the incorporation.⁶

Historical Sidebar: Incorporation Remorse

Lingering resentment over the decision to incorporate or dissatisfaction with the new village administration and associated property tax increase has sometimes led to an effort to quickly reverse the decision to incorporate.

The 1870s-1890s witnessed many such instances of incorporation remorse in which efforts to dissolve were launched within a few short years of a village's incorporation. In the village of Holland Patent (Oneida County), a special election on disincorporation was forced in 1887, just two years after the village was chartered. More votes were cast on the dissolution issue than in the original vote to create a village government. A news item reporting on the vote emphasized the dissolution effort as part of that original, contentious dispute over incorporation, a referendum of sorts on the wisdom of having incorporated. Upon defeat of the measure, the *Roman Citizen* pleaded for peace. The villages of Patchogue and Amityville (both in Suffolk County) faced challenges after being incorporated for only a year: the 1894 petition efforts "fizzled" in the former, while Amityville's residents defeated the effort at the polls (in 1895).

In Southampton (Suffolk County), the year-old incorporation was tested in 1896 by complaints of profligate spending and too few benefits. That all residents were required to pay taxes for the provision of water and electric lights but not everyone in the village received those services contributed to the dissatisfaction. Dissolution was rejected by Southampton's voters on February 15, 1896. In that same year, residents in the neighboring village of Northport (Suffolk County) petitioned for dissolution of their two-year-old incorporation. The measure was defeated by a vote of 275-118 and was celebrated with a bonfire and the firing of guns. Accusations of a town plot to bond the village to pay for sewer services led to an 1898 call to disincorporate the 18-month-old Village of Pleasantville which was similarly defeated at the polls — an outcome that inspired an impromptu victory parade. The cost of progress (in the form of a new sewage system) likewise prompted a failed dissolution vote in the Village of Mount Kisco (Westchester County) that same year. After being incorporated in 1893 by a margin of five votes, dissolution was twice put to a vote in Babylon (Suffolk) by 1899 and "very nearly triumphed." The push to disincorporate the Village of Sea Cliff (Nassau County) in 1896 and then again 1900, after just a few years of incorporation, was also prompted by frustration with ever-growing expenditures.

Other communities have successfully dissolved their village incorporation in relatively short order. The Village of Sherman Park (Westchester County), incorporated in 1906, lasted only 8 years, after having changed its name to Hillside (in 1909) and to Thornwood (in 1914) in its waning days of existence. La Fargeville (Orleans County) was incorporated and dissolved in the same year (1922). More recently, the Village of Pine Valley (Suffolk County) was incorporated in 1988 and dissolved in 1991. The incorporation of Amchir's (Orange County) lasted only four years (1964-68), while Mastic Beach dissolved their incorporation after just 6 years (2010-16).

Only two villages have incorporated, dissolved, and then reincorporated again: Nyack (Rockland County) and Ovid (Seneca County). When Nyack was incorporated in 1872, all was well for a while but extensive spending soon prompted voters to discontinue the corporation. They circulated a petition and secured the requisite number of signatures but were thwarted when the trustees refused to schedule a referendum. A legal battle ensued between residents and trustees. In anticipation of an adverse ruling in the courts, the village trustees appealed to the state legislature, asking for a special law protecting the village against dissolution. The measure passed both chambers on its second legislative attempt but was vetoed by Governor Robison. Finally, after a two-year legal battle, the residents of Nyack voted to dissolve by a vote of 282-71. The *New York Times* proclaimed the "Lesson of Nyack" to be that "villagers of Nyack have done wisely in determining to rub along with less government and more comfort."

Upon its dissolution, administration of village affairs fell to citizen committees which corrected the previous mismanagement. The growth of the community, however, soon led to questions regarding the effectiveness of town governance. Fears that the incorporation of Upper Nyack might eventually lead to their annexation, the citizens of Nyack voted to reincorporate on February 27, 1883 by a vote of 319-97.⁷

Controlling Development and Zoning

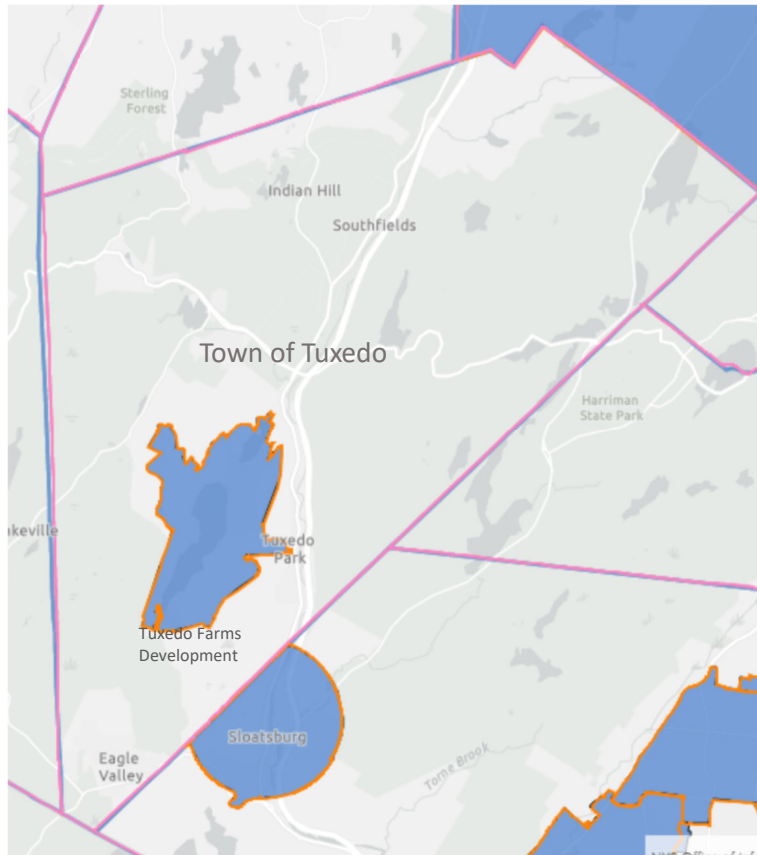
While, the motivation for village incorporation has been historically related primarily to the need for additional or enhanced services in more-heavily populated areas of the town, recent incorporation controversies demonstrate that the contemporary desire to incorporate is less about service provision and increasingly about ensuring localized control over land-use, code enforcement, zoning, and development. The creation of the village of Tuxedo illustrates a form of defensive incorporation — municipal creation designed to stave off a community falling subject to the land-use and zoning regulations of an embracing, adjacent or even future municipality.

The Village of Tuxedo (Town of Tuxedo, Orange County)

On July 16, 2019, residents in the town of Tuxedo (Orange County) voted to incorporate the new village of Tuxedo (under Article II of the General Village Law) by a vote of 478-23. At the same election, residents simultaneously voted to consolidate this new village with the town, creating a consolidated town-village government (under Article 17-A, 615-12) operating as a single government. The consolidation leaves the preexisting village of Tuxedo Park (incorporated in 1952), located within the center of the town, intact. Tuxedo Park residents, who remain part of the town, voted on consolidation but did not vote on the incorporation of the new village. This incorporation and consolidation of Tuxedo achieved a result similar to a coterminous town-village, although through different legal processes. There are six coterminous town-villages in existence in New York: Mount Kisco, Harrison, and Scarsdale (Westchester County); Green Island (Albany County); East Rochester (Monroe County); and Kiryas Joel (Orange County).

The village was not incorporated to provide greater or additional services to its residents — indeed, the village was created and consolidated in same-day, simultaneous referenda. Rather, because New York law does not allow the incorporation of a village inside the boundaries of an already existing village, the new consolidated town-village of Tuxedo will effectively *preclude any other village from being incorporated in the territory of the town*, including any new village that might be formed from any future development of an area of the town known as Tuxedo Farms — a long-stalled and contested proposal for a multiphased planned commuter-community that was to eventually to include some 1,200 new homes. After a decade of plan alternations, public resistance, and wrangling with the town over permitting, environmental requirements, and necessary approvals, the developing corporation finally broke ground in 2015, laying roadbeds, installing sewer lines, and building a \$10 million water-sewer facility. But when the local high school lost its contract with the neighboring village of Greenlake, its enrollment dramatically declined. Rather than closing the school or transferring students to a neighboring district, the Tuxedo Board of Education voted to keep the school open, thereby foreclosing the ability to pursue alternative arrangements for securing education services. Because builders could not secure prospective buyers who demand high-quality educational services, the project again stalled.

FIGURE 1. In simultaneous referenda, the village of Tuxedo was incorporated and consolidated with the town of Tuxedo. The newly consolidated entity will operate under a single town government. The preexisting village of Tuxedo Park remains a separate village entity. The move will prevent the formation of any new breakaway villages in the town of Tuxedo.



NOTE: All maps were created by the author using ArcGIS, light grey canvas base-map, layer municipal/village boundaries.

The creation and consolidation of the village of Tuxedo was a preemptive measure that will prevent the incorporation of any future breakaway village, ensuring that the consolidated town-village government (now with additional acquired authority under village law) retains control over zoning and land use regulations if and when further residential development projects advance. The underlying concern of many residents was that rapid expansion and influx of new residents will change the rurality of the town, create environmental and quality of life effects, and will shift existing political power. Current residents thus made creative use of existing incorporation and consolidation procedures to ensure that a *townwide government* remains in control when weighing the trade-offs between residential, economic, and commercial development and the preservation of existing community character.

East Quogue (Town of Southhampton, Suffolk County)

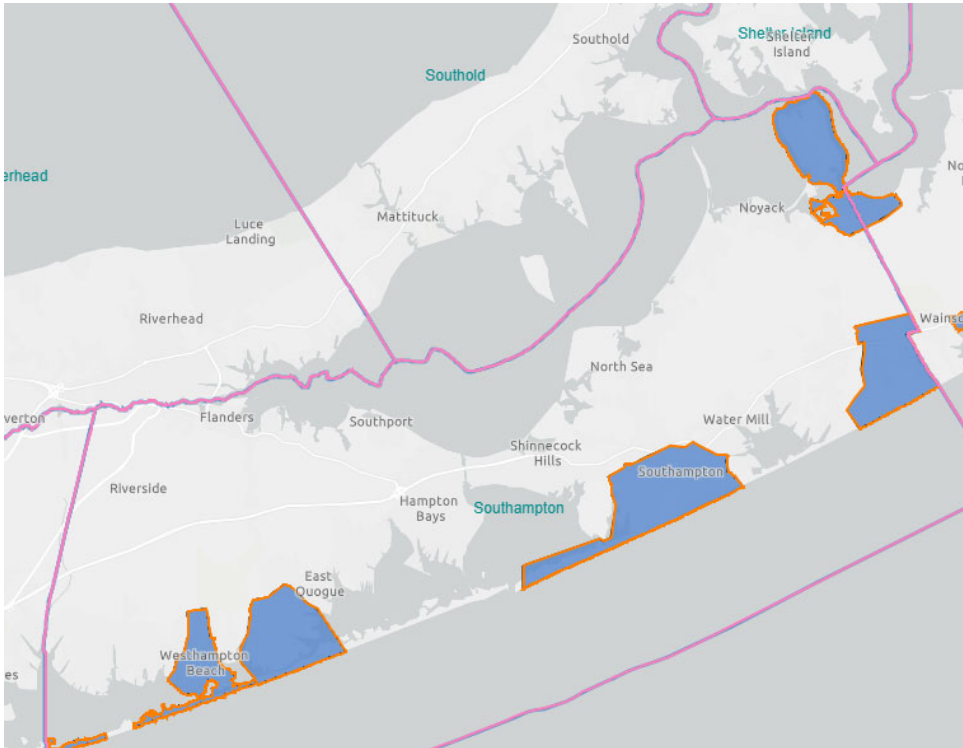
The residents in the hamlet of East Quogue similarly will soon vote on their own question of village incorporation. Underlying the active incorporation efforts, there is growing dissatisfaction of East Quogue residents with the Town of Southhampton's handling of development and land use issues, including a multiyear controversy over the proposed development and zoning changes for a 591-acre proposed golf community project that was originally to be known as the "Hills at Hampton." Fearing potential negative environmental impacts of the development, a coalition of concerned residents had filed suit against the initial approvals granted by the town zoning board, setting off a complex and prolonged litigation battle. The town, which has the primary responsibility for approving the disputed project, was caught between those residents who supported the proposed development and those who favored environmental preservation.

In December 2017, despite having passed necessary zoning changes and accepted the findings of required environmental reporting, the Southhampton Town Board officially rejected the project. The out-of-state developers immediately filed a \$100 million suit against the town, asserting their property rights and a commitment to moving the project forward. In 2019, the proposal was back before local zoning authorities under new regulations and a new name, the Lewis Road Planned Residential Development, moving the issue under the jurisdiction of the town zoning board of appeals.⁸ The Pine Barrens Commission — a five-person commission comprised of the supervisors of the five towns spanned by the forest and regulated by the 1993 Pine Barrens Act — has also asserted jurisdiction of the proposed developing.⁹

Hoping to exercise their own voice in these ongoing development and land-use decisions, residents of the hamlet of East Quogue petitioned to incorporate as a village. A petition, filed in April 2019, was initially rejected by the town supervisor due to the inclusion of a number of deceased individuals on the roll rendering list of "regular inhabitants" as required by state incorporation law to be inaccurate. A revised petition was filed in June and was determined to be in substantial compliance with state incorporation laws.

Incorporating as a village ostensibly would have given residents in the 4.5 square-miles of East Quogue direct authority in matters its residents perceive as having been mismanaged by town representatives, including the controversial Hills at Hampton/Lewis Road project. The proposed incorporation was modeled on the neighboring village of Sagaponack (incorporated in 2005), which substantially relies on the town for essential services and has an unpaid village board. This sort of "skinny incorporation," was intended to give village residents greater control over zoning and land-use decisions while minimizing the associated costs of operating a separate village government.

FIGURE 2. The hamlet of East Quogue voted against incorporation in October 2019. The formation of a village government ostensibly would have given East Quogue residents who were dissatisfied with the town’s administration of land use and environmental issues a stronger voice on proposed development by acquiring village zoning and land-use authority.



But whether the new village would have had the ability to impact the Hampton Hills/ Lewis Road development is a contested question. Article II of village law provides that “for a period of two years after the date of incorporation, all local laws, ordinances, rules or regulations, which otherwise would apply. . . including but not limited to zoning ordinances, shall remain in effect.”¹⁰ Per the same law, “however . . . any such local law, ordinance, rule or regulation shall cease to be in effect in the village . . . when replaced by any general or special law covering the same subject matter.” Moreover, because developers have entered into covenants with the town, some legal experts suggest that, regardless of the village’s assumption of local law authority, such covenants remain legally binding. Thus, there was a debate over whether town law would continue for two years, or whether the new village board could immediately act to supersede town law with its own regulations. On October 17, 2019, the residents voted 889-642 against incorporation. Under Village Law, incorporation supporters must wait 1-year before filing another petition to incorporate.

Promoting Self-Interest Through Self-Governance

Municipal incorporation has long been recognized as motivated by the economic self-interests of its residents to secure a particular level of services and to promote commercial and economic development.¹¹ That is, the impetus for forming a local government stems from and requires the mobilization of property and business

owners to initiate the creation of a corporate body politic — that level of mobilization and support requires a sufficient support from those residents who must pay taxes to sustain the incorporation. The desire for self-governance is thus inherently tied to the self-interest of village residents. The residents of the town-outside-of-the village (TOV) will be impacted by the formation of a new village government, but under New York’s incorporation requirements, they do not have a vote in the decision to incorporate (or dissolve). The ongoing battle over the proposed incorporation of the village of Edgemont illustrates how the desire for localized autonomy may clash with the interests of the embracing town or towns.¹²

The Proposed Village of Edgemont (Town of Greenburgh, Westchester County)

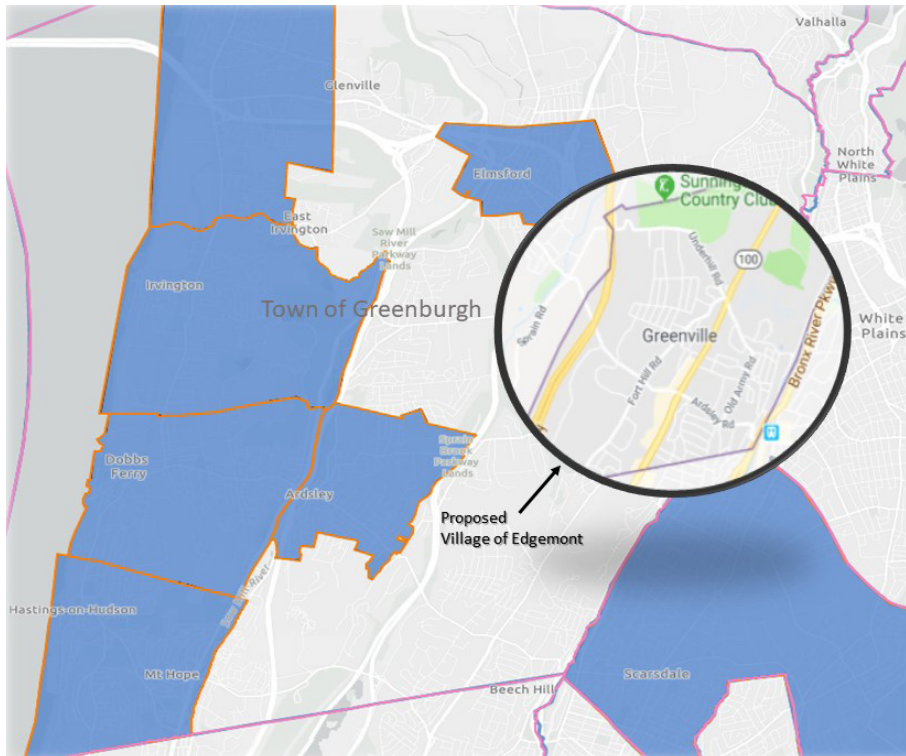
In 2016, residents in the census designated place of Greenville launched a petition drive to incorporate as the village of Edgemont. Following a series of contentious hearings on the legal sufficiency of the petition, the Greenburgh town supervisor rejected the petition as insufficient under Village Law, Article II. Specifically, he determined that there was uncertainty over the boundaries (i.e., whether the boundaries of the proposed village were congruent in its entirety with the Greenville fire district or to the Edgemont school district), that the accompanying list of regular inhabitants was inaccurate, and the petition lacked the requisite number of valid signatures.

A citizen coalition, known as the Edgemont Incorporation Committee (EIC), filed an Article 78 proceeding, challenging what they viewed as the hypertechnical rejection of the petition.¹³ A supreme court (trial court) judge overturned the supervisor’s finding in February 2018, ordering that the vote on incorporation move forward. The appellate court, however, upheld the town supervisor’s rejection of the petition on the grounds that with respect to the improper map and list of inhabitants, his findings were “not illegal, based on insufficient evidence, or contrary to the weight of the evidence.”¹⁴

A second incorporation petition, filed May 28, 2019, was similarly rejected after a July 16, 2019 hearing. The basis of the denial was again noncompliance with Article II petition requirements, including (again) its failure to provide an accurate list of all regular inhabitants (minors were not identified by name), an improper description of the proposed village boundaries in metes and bounds in compliance with Village Law 2- 202(c)(1) to satisfy common certainty and inclusion of entirety of existing fire and school districts. The EIC has again filed suit, filed August 26, 2019, and the matter is currently under litigation. The legal redux will again center on the technicalities of the petition requirements and the authority of the town supervisor to determine its legal sufficiency.

The level of acrimony in Edgemont prompted the New York State Senate Majority Leader to intervene with the appointment of a mediator to facilitate a dialogue between representatives of the town and EIC as to the best way to reconcile their differences regardless of the outcome of the petition. The authority and impact of this mediation is unclear — the EIC filed its second suit two months after his appointment and neither they nor the town have given any public indication of backing down. In the meantime, both sides have expended considerable resources in the incorporation and litigation efforts, further deepening the divide of public sentiment.

FIGURE 3. Residents in the Greenville Fire District have filed two petitions to incorporate as the village of Edgemont, both of which have been declared insufficient by the town of Greenburgh supervisor.



For the residents supporting the proposed village, the issue is one of self-determination and choice. Supporters understand that the creation of a new village will likely raise their property taxes. Their pursuit of municipal independence is not about lowering taxes but about preserving quality services, protecting their own property values, retaining localized control over zoning and development decisions, and securing dedicated representation for Edgemont’s residents (who comprise only 17 percent of the town’s population) through the creation of a separate village government.

From the perspective of the town and new-village opponents, incorporation would allow an affluent area to separate itself from the rest of the town, taking away a significant portion of the town’s tax base, *after* substantial town investment and commercial and economic development in that area — much of the town’s commercial center is located in the proposed village. The alleged motivation for the separation includes an unwillingness of Edgemont residents to continue subsidizing lower socioeconomic areas of the town, including a recreational community center in the adjacent hamlet of Fairview which services many low-income minority residents. The incorporation battle in Edgemont introduces difficult questions of class and race into the definition of community and into those boundaries of obligation, which attend municipal jurisdictional lines.

Defining Community Identity and Residential Character

The battle for community identity is perhaps most dramatically illustrated by the village incorporation and dissolution cases in Orange, Rockland, and Sullivan Counties, where clashes between the growing ultraorthodox population and nonorthodox residents have resulted in acrimony, litigation, counter allegations of discrimination, and even criminal conduct.¹⁵ In short, the migration and growth of ultraorthodox communities in the counties surrounding New York City has led to the formation of villages (and towns) to accommodate their needs. Conversely, the dissolution of governing units has also been pursued as a means of diluting, or constraining, their voting power. Villages created to accommodate orthodox communities include New Square (1961) and Kaser (1990) in the town of Ramapo in Rockland County, and Kiryas Joel in the town of Monroe in Orange County. Villages founded to preserve land-use control for the nonultraorthodox residents include the villages of Pomona (1967), Wesley Hills (1982), Chestnut Ridge (1983), Montebello (1986), and Airmont (1991) in Rockland County and of South Blooming Grove (2006); and Woodbury (2006) in Orange County.¹⁶

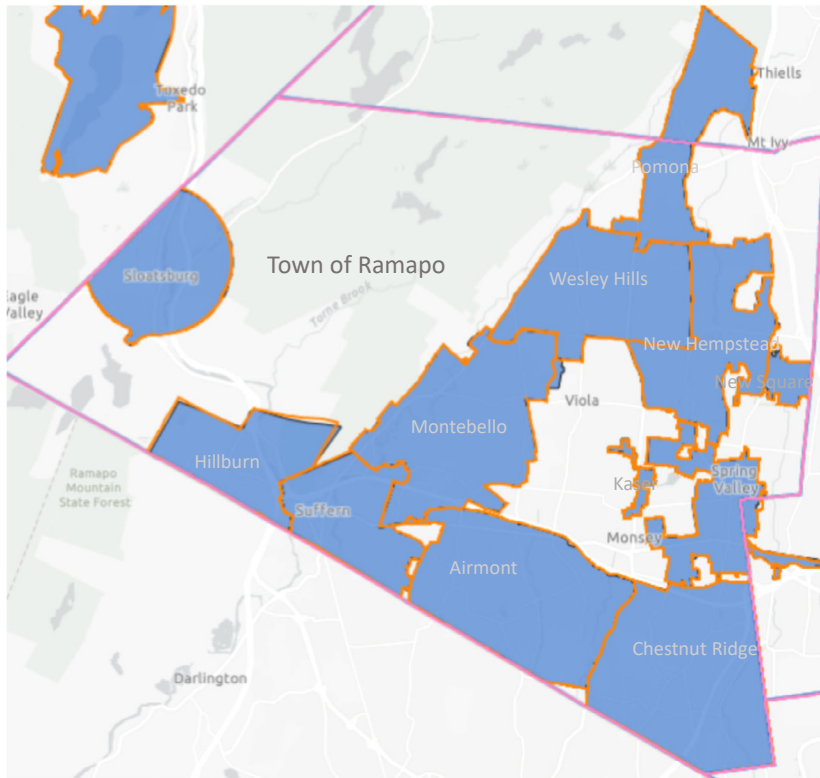
Kiryas Joel and the Town of Palm Tree (Orange County)

In the 1970s, practitioners of a strict form of Judaism purchased land on which to construct a small housing development in the rural town of Monroe in 1974. By 1976, the Satmar community had grown from 100 to 500 residents. The town negotiated with the community for the incorporation of the Village of Kiryas Joel in 1977.¹⁷

The village's boundaries were narrowly drawn to encompass the footprint of the Hasidic residents. Within the village of Kiryas Joel, there was a growing divide "with battles over everything from the choice of a successor for a grand rabbi to the enforcement of local building codes."¹⁸ The period in the late 1980s and early 1990s erupted in intimidation and violence against internal dissidents many of whom left the village, purchasing homes in the adjacent unincorporated areas.¹⁹ The acrimony led to an unsuccessful effort of a dissident group, known as the KJ Alliance, to legally challenge the existence of the village as a violation of the constitutional prohibition on the establishment of religion.²⁰ A district court rejected the argument, ruling that the formation of a village "falls into a long American tradition of robust support for religious subcommunities, a tradition that enables private communities to form and then, once formed, to translate their private power into political power."²¹

The tensions between Kiryas Joel and the town of Monroe have been exacerbated by its rapid population growth. What started as a community of 100 residents is projected to grow to 48,003 by 2027.²² With this population growth has come an explosion in high-density residential development, increased water and sewer demands, and escalating clashes over the enforcement (or nonenforcement) of environmental regulations.

FIGURE 4. In the town of Ramapo in Rockland County, the formation of local governments around ultraorthodox communities has been litigious and highly contentious.



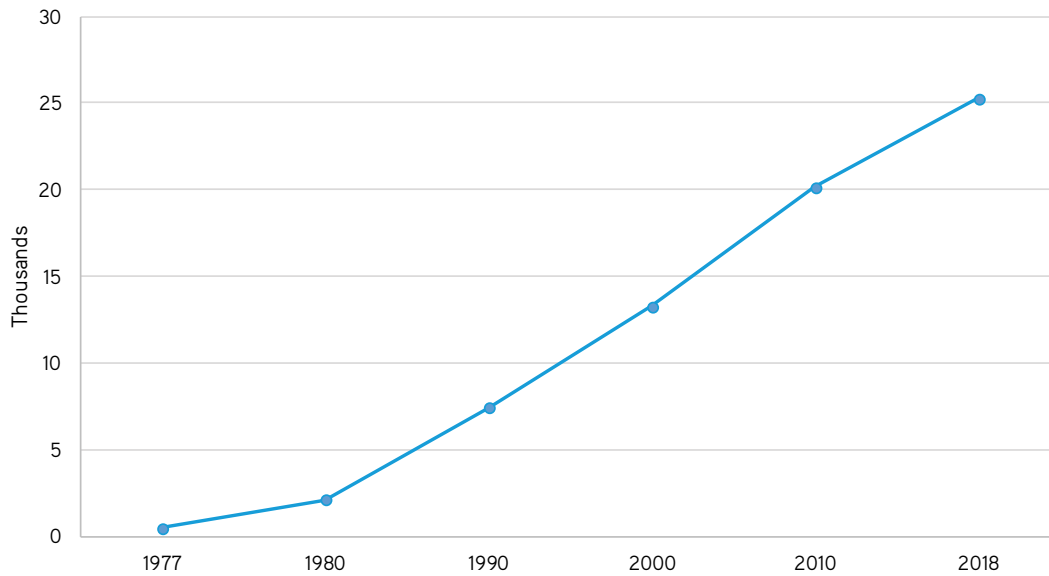
Many of Monroe’s residents resent the high-population development as anathema to the rural character of the town by taking on an increasingly urban character of high-density, multifamily housing with increased congestions, waste, and water-use problems. Yet, zoning regulations and code enforcement which may be perceived as neutral in other contexts, can have a discriminatory intent or effect when applied to orthodox communities.

The ongoing and publicly heated battles over zoning, building codes, and environmental regulations, became a battle over actual turf as the Village of Kiryas Joel has sought to expand its territorial footprint through the power of annexation.²³ The attempt to annex additional land from the town outside of the village, was immediately met with fierce resistance and legal challenges by a citizen organization, United Monroe, and its associated nonprofit, Preserve Hudson Valley, and a coalition of adjacent municipalities. After intense legal wrangling and discord, the annexation was compromised down to 164 acres (from the originally proposed 507 acres).

Regulations and code enforcement which may be perceived as neutral in other contexts, can have a discriminatory intent or effect when applied to orthodox communities.

FIGURE 5. Population Growth of the Village of Kiryas Joel

Among the factors making the ultraorthodox community cases so fraught is the rapid population growth. The village of Kiryas Joel is the fastest growing community in New York State and one of the poorest.



In 2016, the Village of Kiryas Joel sought the equivalent of a municipal divorce by proposing the creation of a new town (Palm Tree) to be formed by the village with the annexation of an additional 324 acres. With intense negotiation, United Monroe and Village of Kiryas Joel representatives successfully brokered a settlement for an official separation between the village and town governments. With the annexation of additional 56 acres, all parties agreed to drop ongoing legal appeals of the previous annexation petitions, and the village pledged to not facilitate additional annexations or village formations. This widely endorsed deal was viewed as the equivalent to a “peace treaty” to end the bitter litigation and annexation wars — a political solution, allowing both the ultraorthodox and nonorthodox communities to control their own destinies. After extensive public hearings, the Orange County legislature put the issue to a public referendum in which the town of Monroe voters overwhelmingly approved (by a 3-1 margin). Because school district protection was a key piece of the settlement, the Monroe, Woodbury, and Kiryas Joel school districts were altered to comport with the boundaries of the new town. With assisting legislation from Albany, the birthdate of the town of Palm Tree was moved up (from a two-year timeline) to January 1, 2019. Palm Tree was the first new town created in New York State in 40 years and is coterminous with the village of Kiryas Joel.

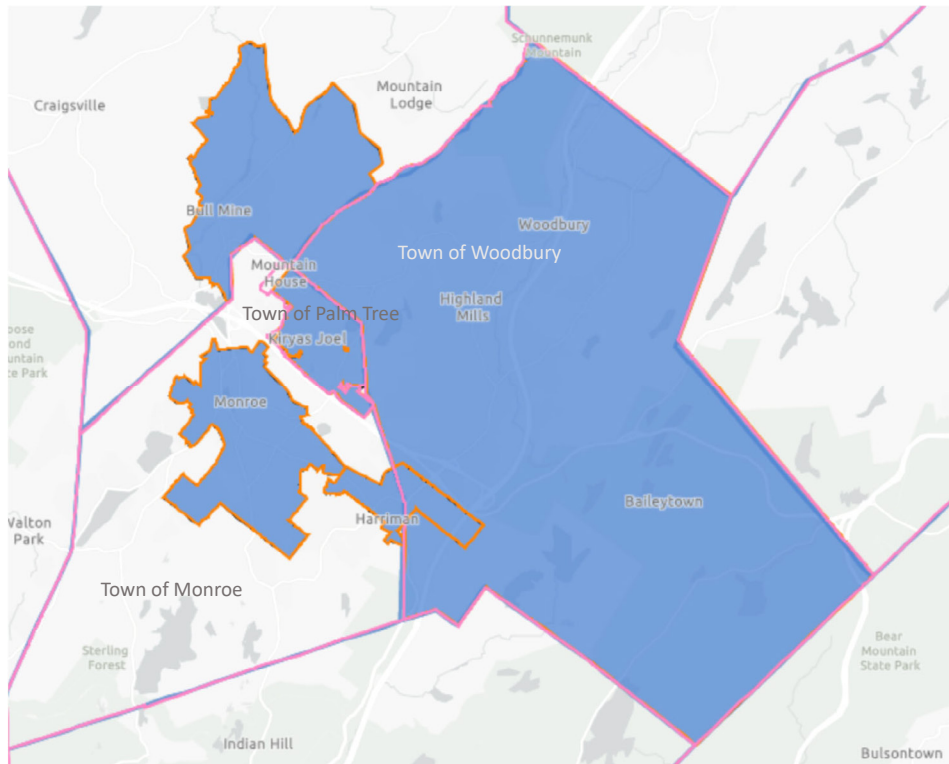
Not all residents were satisfied with the splitting of the town. Opponents alleged that the arrangement served the personal and political benefit of local and state elected officials; many openly doubted that the creation of Palm Tree would curb the growing orthodox community’s demand for additional land and services. Most alarming for some was that much of the unincorporated and undeveloped area just outside of the coterminous town-village of Palm Tree was owned by members of the KJ Alliance, none of whom were bound by the Palm Tree settlement.

The Proposed Village of Seven Springs (Orange County)

In 2018, a petition to incorporate that area left out of the newly formed town of Palm Tree as the new village of Seven Springs was filed with the Town of Monroe. This second village would be even territorially larger than the town of Palm Tree, reigniting the fears of town of Monroe residents that the growing number and political strength of the ultraorthodox communities are threatening the residential character of the town. The petition was temporarily placed on hold pending resolution of various annexations petitions filed by the Villages of Blooming Grove and Monroe. An amended of petition, excluding territory subject to annexation was rejected by the Monroe town supervisor for insufficient signatures.²⁴ In March, 2019 a second and third petition (amended and refiled on March 21 and 29, respectively) was challenged by a competing annexation effort by the village of Kiryas Joel.²⁵ The Orange County supreme court determined that the incorporation petition had legal primacy (based on its filing date) and ordered the town supervisor to proceed to the determination of the petition's sufficiency (a ruling pending possible appeal as of this writing).

The Seven Springs proposal has been decried by United Monroe and by the leadership of Kiryas Joel, as disruptive to the Palm Tree settlement. Yet, if residents of the proposed village meet the territorial and population requirements, a legally sufficient petition will place the matter up to a public referendum in which only the residents of the proposed village will have a vote.

FIGURE 6. In 2019, the town of Palm Tree was created as part of the municipal divorce between the village of Kiryas Joel and the town of Monroe. There is now an effort underway to incorporate the area outside of Palm Tree as the new village of Seven Springs.



II. The History of Village Incorporation and Procedures in New York State

The decision to incorporate a village government has always been driven by local action — whether through appeal to the legislature, judicial application, or petition and referenda. Part II examines the patterns of incorporation in New York State and traces the modest evolution of the state’s incorporation procedures.

FIGURE 7. A public notice of the impending vote on incorporation of the village of Broadalbin in Fulton County (1924). Since 1897, the decision to incorporate has been left to the voters of the prospective village.

Notice of Election!

Notice is hereby given that on the 6th day of August, 1924, between one o'clock in the afternoon and eight o'clock in the evening an election will be held at Town Hall to determine whether the territory hereinafter described shall be incorporated as the Village of Broadalbin. The territory proposed to be incorporated as described in the proposition for the incorporation of such village is as follows:

Beginning at an elm tree on the town line between Broadalbin and Mayfield, on the north line of the highway, leading from Broadalbin to Vail Mills, about 192 feet westerly from the property line of D. Gifford and M. Peek. Running thence north one degree and forty minutes East 3620 feet, to a pine tree on the property line of Chambers and B. & M. Cemetery, thence running through land of Peek, Jeans, Baum and Chambers crossing the highway, called Second Avenue at a small bridge, from the lands of Baum and Chambers, also crossing the highway leading from North Main Street to Mayfield, on lands of Chambers, thence running North 88 degrees 20 minutes East 5170 feet to a stake, through lands of Chambers, Martin, Stoddard, Grinnell, Hudson, Grinnell and Beers, crossing the highway leading from North Street to Northampton, at a point 6 feet north of a maple tree, also about 40 feet north of a small pond on lands of Martin.

Thence running South 1 degree and 40 minutes West 4395 feet to a stake, through lands of Beers, Demarest, Steel, Broadalbin Knitting Co., Ltd., Jeans and Phillips, crossing the highway from Union Street to Union Mills, on the lands of Beers, east of the farm house, crossing Kennyetto Ceeek, from lands of Steel to the Broadalbin Knitting Co., Ltd., crossing the highway from Saratoga Ave. to Stevers Mills, from lands of the Broadalbin Knitting Co., Ltd., to Jeans, thence running South 64 degrees and 45 minutes West 3960 feet to a stake, through lands of Phillips, Coons, Carndoff, Fassett, Best and Weiderman, crossing the highway leading South from the C. Jeans farmhouse, there being a large Elm tree on the line on lands of Coons, thence running South 52 degrees and 45 minutes West, 2004 feet to a stake, 32 feet South of the R. R. fence, through lands of Weiderman, Judson and Find, Bartlett and Seward, crossing the highway called Second Avenue, from lands of Weiderman to Judson & Finch, also crossing the highway called Elm Street, from lands of Judson and Finch to Bartlett, thence running North, 1 degree and 40 minutes East 1358 feet to Elm tree, being the place of beginning, through lands of Seward, Judson and Ward, crossing the Gloversville and Broadalbin R. R. from lands of Seward to Judson, crossing the Kennyetto Creek from lands of Judson to Ward, crossing the highway called West Main Street from lands of Ward to Peek, the above described line enclosing 638 3-10 acres of land.

Dated July 19th, 1924.

T. Ernest Lee,

Clerk of the Town of Broadalbin

Village Incorporation in New York State

[Figure 8](#) charts the number of village incorporations in New York by decade. Historically, 675 communities have been incorporated as villages. The incorporation of villages by special act of the state legislature started in the 1790s. Villages were not, however, officially recognized as a civil subdivision of the state until the passage of the 1821 Constitution. Villages were thus the last form of general municipal government to be legally recognized (after the county, town, and cities), yet were the first to be subjected to the passage of general legislation with the creation of the General Village Act in 1847. Rather than being governed by individual charter established by special legislative act, new villages now could be created by local action, and governed by a common statute, or general law applicable to all villages incorporated under its provisions. Special legislation as a vehicle for village incorporation was not, however, banned until 1874 — thus, while most villages reincorporated under the general laws, around a dozen existing villages still operate under their original legislative charter.

From its inception, general village law allowed residents, meeting specific population and territorial requirements, to self-initiate and execute an incorporation. Under the 1847 law, residents had to do so through judicial application. When the General Village Law was amended in 1897, it established procedures for a petition and public vote submitted to the town board rather than the courts.

The ease and volume of villages incorporating and dissolving under the General Village Law resulted in the state losing track of which communities were operating as incorporated villages. Surveys were conducted in 1881, 1886, and 1931, whereby the respective secretaries of state sent inquires, usually to local postmasters, to clarify the legal status of the community for the purpose of compiling an accurate inventory of village governments in New York. A requirement that a certification of incorporation be filed with the state was added in 1907, allowing the state to keep better track of the creation of new villages.

The formation of new villages during the early years and into the peak of incorporation (1840s-1990s) was predominately associated with commercial development and the need to provide desired services to those residents living in the more populated areas of the town. That is, village governments were primarily created to provide streets, lighting, sewer, and water, or to meet the public safety needs of these higher density areas. Because towns lacked the power and capacity to provide services on other than a townwide basis, the creation of a village allowed its residents to secure these services with the associated costs (taxes) bourn by the new village residents.

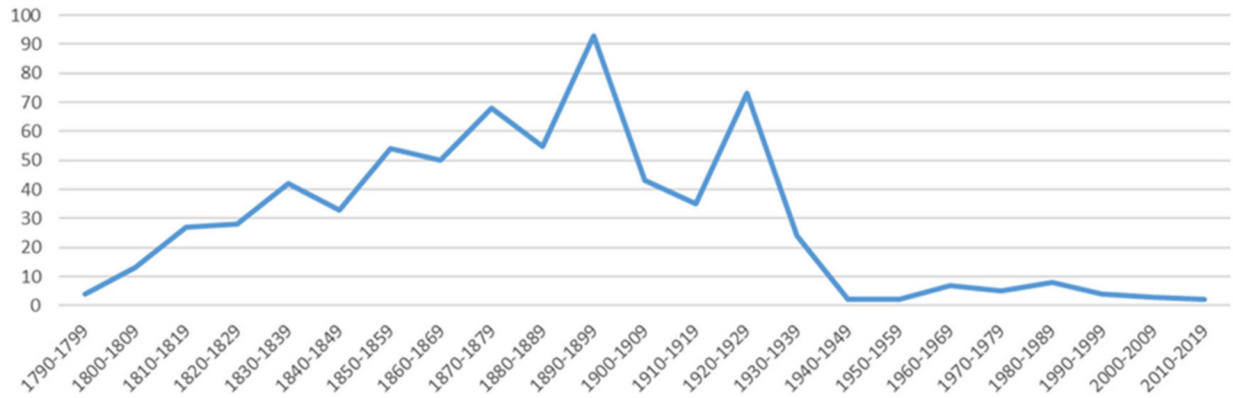
Since 1940, the rate of new village incorporations has declined significantly. This decline is largely attributable to the expansion of the general service functions of towns and counties, the creation of a suburban town law, and the development of special districts. Population shifts, first to the cities and then to metro-suburban areas, accompanied by expanding functions of suburban towns, also significantly contributed to this decreased demand for new villages. In short, the incorporation of a village

Since 1940, the rate of new village incorporations has declined significantly.

government was no longer necessary, once services could be directly provided by the town or provided on a districted basis, thereby allocating the costs of enhanced or targeted services to those living within the special-service district.

FIGURE 8. New York Village Incorporation by Decade: 1790-2019

Author compiled data utilizing an inventory of incorporated villages as reported by assorted Civil Lists (1858; 1860; 1867; and 1888), the Report of the Statutory Revision Committee (1897), and Bender’s Village Law (1914) along with a review New York State Session Laws (1789-2010), village incorporation files housed at the New York State Archives, and historical newspaper coverage.²⁶



Particularly in metro-adjacent areas, the formation of villages became an increasingly defensive measure, undertaken to avoid annexation by a growing city. Most of the wave of incorporations of the 1920s and 1930s were in downstate counties of Nassau, Suffolk, and Westchester and reflect the desire of residents in rural areas to preempt urban encroachment, preserve the residential character of village-style-communities, and preserve their existing property values. Because incorporated places cannot be annexed without consent and because incorporation confers governing authority on a local board, incorporation of a separate village government maximizes localized control over the tax-base, zoning, code-enforcement, and land-use regulations. These powers allow residents of that territory to more directly control the residential character of their community in terms of its population density, economic and commercial activities, and future development.

Incorporation of a separate village government maximizes localized control over the tax-base, zoning, code-enforcement, population density, and land-use regulations.

New York’s Village Incorporation Provisions

Since 1847, New York law has left the decision to incorporate (or dissolve) in local hands, requiring compliance with basic population, territorial, and petition provisions specified by state statute. [Appendix A](#) provides a review of the provisions controlling the incorporation of village government in New York State from 1847 to the present.

The process has always been citizen driven, initially requiring residents seeking to form a village to do so through legislative and then judicial application and, since 1897, through purely local action of petition and referendum.

The basic incorporation requirements have changed only modestly over time. Territory properly incorporated as a village is limited to otherwise incorporated areas of any town (or towns), requires a minimum population (which has varied between a low of 50 and high of 500 regular inhabitants), and a territorial requirement (which has ranged from a maximum of 1-5 square miles). State law has consistently limited the grounds upon which a petition can be challenged (or objections raised) to *compliance with these population, territorial, and petition requirements*, including verification of the requisite number of proper signatures, an accurate census (or list of regular inhabitants), and an accurate description of the proposed boundaries (whether by map, metes and bounds, or congruence to other existing municipal districts — i.e., fire districts, school districts). In 1928, the General Village Law was amended to clarify that the burden of proof *is on those objecting to the petition*.

Valid participation in the petition and public vote has always been limited to the qualified electors of the proposed village. In 1903, the state added the approval by owners of one-third of the assessed value of the new village to the signature requirements, thus requiring that a substantial number of those residents who would bear the tax burden for the provision of services and village administration were supportive of the village creation. The courts would invalidate property requirements for all petitions and referenda in 1968.

When Village Law was substantially overhauled in 1972, incorporation requirements were reconstituted as Article II of the General Village Law (where they presently remain). Territorial requirements were raised to not more than five square miles, and the population requirement to not less than 500. Village boundaries still had to be coterminous with one or more districts, or with a town. Under Article II, the petition requirements require either the signatures of 25 percent of the proposed village population *or* the signatures of the owners of more than 50 percent of the assessed value of the village. Documentation in support of the petition must include a description of the territorial boundaries (by map, metes and bounds, or description through reference to existing service districts), a list of its regular inhabitants, a certification of assessment values for verification of signatures, and a \$100 deposit.²⁷ These basic elements of incorporation have undergone only minor, technical revisions since 1972.

New York law authorizes legal challenges to village incorporation *only with respect to the sufficiency of the petition and referendum*. In the early 1980s, New York courts rejected the authority of towns to add to the incorporation requirements spelled out in Article II of the General Village Law through the adoption of local laws. The case involved the enactment of 1967 local law by the Town of Ramapo (Rockland County) designed to preserve its comprehensive master plan. The local law required that any village incorporation in the town of Ramapo not only be in the “over-all public interest” of the incorporated territory but in the overall interest of the remaining territory in which such village is located, and in the interest of any town-improvement, school,

fire, fire-protection, or other district located in whole or in part in the new village.²⁸ The town supervisor and Ramapo Town Board rejected the petition for incorporation of the village of Wesley Hills, concluding that, in addition to the insufficiency of signatures, the petitioners had not satisfied the local law requirement. The town supervisor determined that the creation of a village increased the local tax burden by adding an additional layer of government, eroded the town's bonding authority, and jeopardized state and federal aid for the town's sewer program. The incorporation petitioners challenged the decision in court and won but on review, the appellate court determined that the town's local law was constitutionally permissible and not preempted by the General Village Law. The majority found that the addition of incorporation criteria was an appropriate use of town zoning authority, consistent with the control over the property and affairs of government protected under the New York Constitution's Article IX provisions.²⁹ Judge Hopkins dissented. In his view, the creation of local governments was a prerogative of the state legislature as controlled by general law and that nothing in constitutional or municipal home rule provisions granted towns the authority to impose additional criteria or to "constrict the initiation of another [form of government] by the exercise of home rule."

New York's Court of Appeals reversed the appellate ruling on the grounds stated in Judge Hopkins' dissent, foreclosing town local law authority and effectively limiting judicial review of incorporation controversies to the determination of compliance with statutory requirements.³⁰ According to the opinion adopted by New York's highest court:

It may well be, as the appellant town argues, that the symmetry and consequences of its zoning and planning ordinances, passed to control the orderly development of its land and population, will be frustrated by the incorporation of a new village within the town's boundaries. It may well be that the problems engendered by the creation of the village should be addressed by the Legislature. These, however, are questions for the Legislature and not for the courts. We must enforce the Constitution and the statutes in their fair intendment and effect.

On the other side, the Legislature might well consider that to allow towns to adopt local laws raising a variety of conditions to the creation of villages in addition to those imposed by the Legislature, would unduly interfere with the desirable standard of uniformity of method for the creation of villages throughout the State, and would inaugurate a parochial resistance by towns to new villages through the formation of difficult or oppressive conditions. The Legislature, indeed, reflects the overriding concerns of the people of the State, and its judgment must ultimately resolve the conflicts between municipal segments of the State, rather than to permit a kind of internecine struggle between them. *Here the Legislature has not found it appropriate to give to towns any power to regulate the creation of villages.*³¹

In other words, if the towns are to be given any substantive say on the village incorporation, that authority must come from the legislature and not from the courts. The limited role of the town has been reinforced by opinions of the Office of the

State Comptroller, which have also determined that towns “may not use town funds or town employees to prepare a proposed budget or other documents for the purpose of showing residents of a proposed village the cost of incorporating and operating a village.”³²

The introduction of the 2009 Empowerment Act revised the process by which local governing units (primarily villages) could be consolidated or dissolved, effectively making it easier for citizens to reduce or eliminate the number of local governments, but otherwise left the incorporation process intact.³³

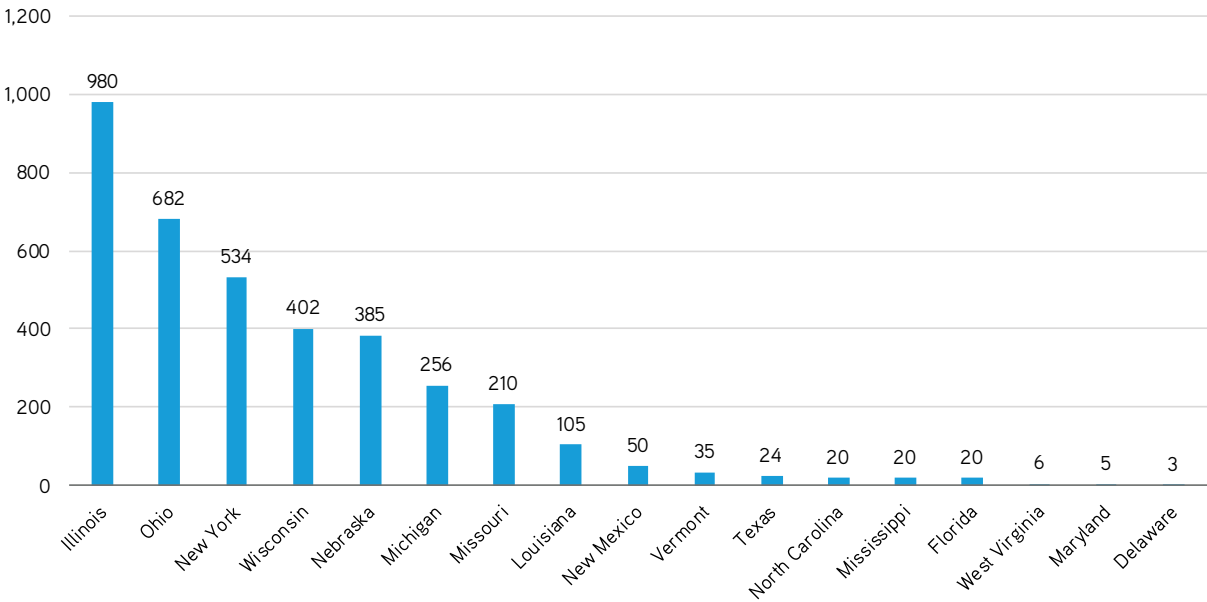
III. Lessons from Other States

Having traced New York’s history of village incorporation, Part III examines the patterns and practices of those other states which include incorporated villages as a form of municipal (substate) government. Such an examination helps to contextualize the status of village government formation in New York and offers alternative models for consideration.

Comparing Patterns of Village Incorporation

According to the Census Bureau there are 17 states which have incorporated villages as a form of municipal government. (Figure 9). New York currently has the third highest number of village governments after Illinois and Ohio. Wisconsin and Nebraska follow with around 400, Michigan and Missouri each more than 200, and Louisiana has around 100. Nine other states have 50 or fewer incorporated villages (New Mexico, Vermont, Texas, North Carolina, Mississippi, Florida, West Virginia, Maryland and Delaware).

FIGURE 9. Number of Incorporated Villages in States with Incorporated Villages, 2019
 Snapshot data of currently incorporated villages taken from respective state’s department of state websites for 2018-19.

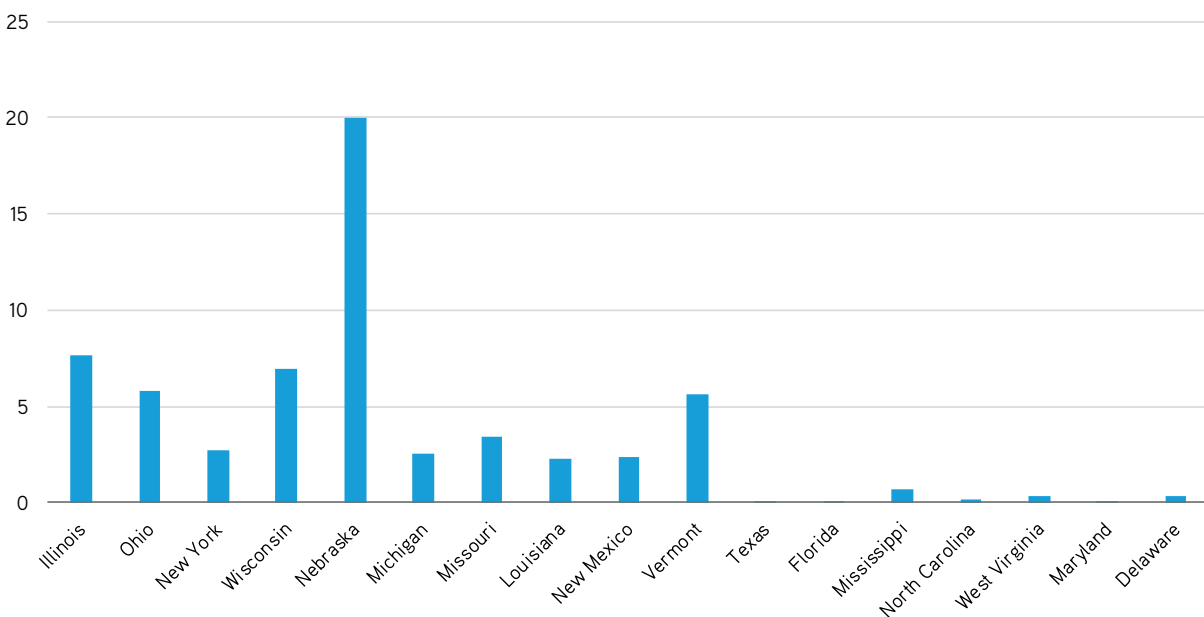


The local government structure, services, powers, and home rule authority varies from state to state making some states better analogs than others for comparison to New York. With almost no remaining unincorporated territory, the issue of new village incorporation in Delaware is effectively obsolete. In Vermont, too, there is little unincorporated territory remaining, so although the state’s requirements are minimal, new village incorporations are rare. In Mississippi, the village form is reserved for communities between populations of 100 and 299. An incorporated village which falls below 50 in population is automatically dissolved and, as of 1972, only cities and towns may be incorporated.³⁴ In North Carolina, there are no legal distinctions between cities, towns, and villages. North Carolina has just 20 incorporated villages (80 percent of which are under 2,500 in population). The Illinois Constitution eliminated incorporated towns in 1870 and since its general acts of 1872 have provided only for the incorporation of cities and villages (although some 19 incorporated towns remain in existence and townships remain as a subdivision of the county).

The rate of incorporated villages per 100,000 residents reveals a slightly different picture. On this metric, New York ranks sixth. In New York, around 40 percent of the state’s population lives in New York City. Dropping out New York City’s population, raises New York’s incorporated villages to 4.84 per 100,000; Illinois raises to 9.81 villages per 100,000 population after dropping out the population of the city of Chicago. Here too, one must keep in mind the particularities of the respective states. In Nebraska, which has the highest number of villages per 100,000, counties have the option of organizing townships — 67 of its 93 counties have *no* township subdivision. The other 26 counties are divided into some 400 towns.

FIGURE 10. Incorporated Villages Per 100,000 Population in States with Incorporated Villages, 2019

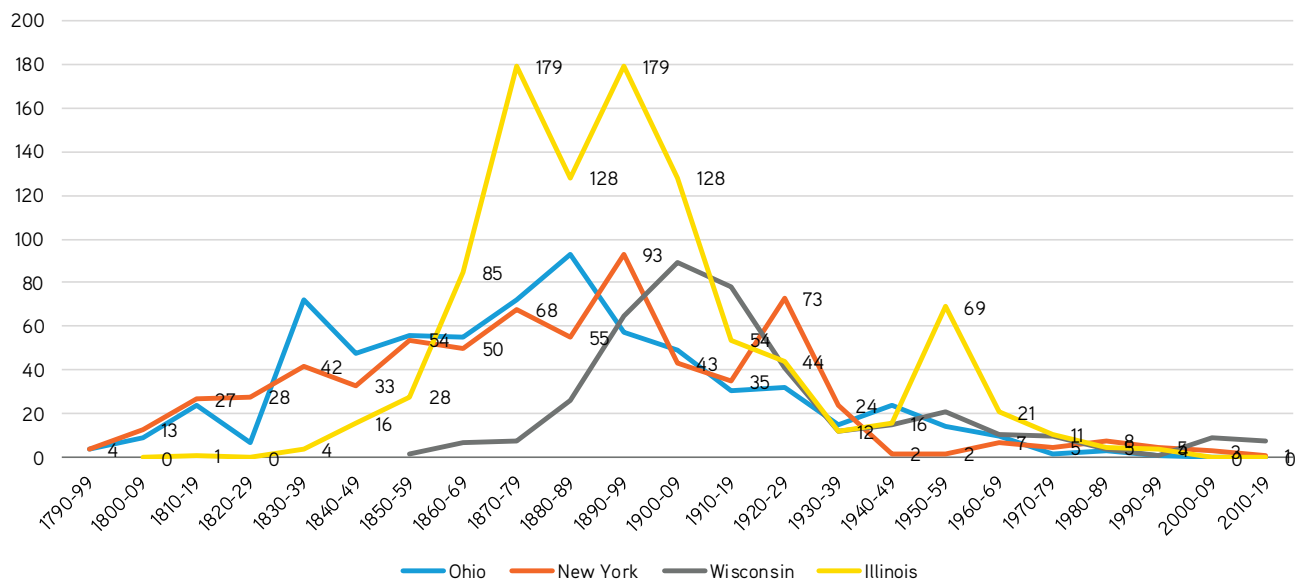
Rates calculated by author utilizing snapshot data (Figure 9) per 100,000 of population according to 2017-18 census data of statewide population.



The general pattern of village incorporations in New York and Ohio track fairly closely reflecting regional historical commonalities (see [Figure 11](#)). Illinois lags New York and Ohio in early incorporations and increases more sharply between 1860 and 1910, and again in 1950-59. Wisconsin (which did not achieve statehood until 1848) did not experience its peak in incorporations until 1900-09. Striking across the patterns of all states is the decline in new incorporations over the last 70 years. The decline starts in the 1930s and, with the exception of Illinois, — which had a wave of 69 incorporations between 1950-59 and 21 between 1960-69 — falls into the single digits by the 1980s.

FIGURE 11. New Village Incorporations by Decade, 1790-2019: Illinois, New York, Ohio, and Wisconsin

New York data compiled by author (includes all incorporations regardless of whether that village is currently incorporated or not). Data for other states taken from respective department of state sources of currently incorporated villages with date of incorporation broken down by decade and graphed by author.



Contemporary incorporation efforts reflect a community’s desire to exercise localized control over zoning and land-use regulations so as to protect property values, maintain desired population density, and provide residents with greater control over quality of life amenities through service provision and code enforcement.

This decrease in new village incorporations across multiple states suggests that the village form of government is increasingly obsolete. Communities simply are not incorporating as villages at the same rate as in the past, even in states that have unincorporated territory meeting the criteria for village incorporation (like New York). Modern incorporation efforts are no longer just about providing services to population centers underserved by the town(s). Rather, contemporary incorporation more frequently reflects a community's desire to exercise localized control of zoning and land-use regulations so as to protect existing property values, maintain desired population density, and provide residents with greater control over quality of life amenities through service provision and code enforcement.

Comparing State Village Incorporation Requirements

A review of contemporary state requirements for the incorporation of new villages places New York among those states with the lowest thresholds. [Figure 12](#) summarizes state incorporation requirements of those states which have incorporated villages. A comparison of the criteria allows a grouping into categories of differential review based on whether state provisions dictates technical (limited to territorial and population requirements) or substantive review (addressing the merits) of the proposed incorporation. New York is one of seven states with minimal statutory requirements and is one of the three states within this group to have a substantial number of villages.

This broad cut of the data suggests that the level of statutory review itself *is not sufficient* to explain the number of incorporated villages in that state. As the general patterns of incorporation demonstrate, incorporation waves track with the larger development and growth patterns from initial settlement, through the Industrial Revolution, the Depression, and post-World War II era, impacted by larger trends of urbanization, suburbanization, and shifts in national and state economies. Because only the changes to New York's incorporation laws are tracked over time in this report, it is not possible to determine whether there is a correlation between changes in procedures and the number of incorporations in other states. In New York, however, it does not appear to be the case that the ease or stringency of the procedure correlates with the number of incorporations. New York's incorporation laws have undergone relatively little change, yet the number of incorporations has varied substantially over time. Moreover, from 1910-19, when the population threshold was lowered to 50-200, fewer villages were created than in the preceding and following decades when the minimum population requirement was 200.

The review of state incorporation laws in [Figure 12](#), however, does highlight the varying degree to which those states with incorporated villages subject incorporation to substantive review criteria, thereby allowing or requiring that the complex questions attending incorporation controversies be assessed. Even where there is no external veto authority, the explication of statutorily prescribed criteria allows the approving authority (most frequently the voters) to make a more informed choice. These comparative provisions also offer prospective models for the revision of New York's incorporation procedures to statutorily require review of criteria beyond basic territorial and population requirements.

FIGURE 12. Summary of Statutory Incorporation Requirements in States with Incorporated Villages

Author’s analysis of state legislative provisions for the incorporation of villages as identified in Appendix B and summarized below.

Comparing State Village Incorporation Provisions

State	State Has Incorporated Towns or Townships	Population and Territory Requirements	Petition and Signature Review (presented to/ reviewed by)	Public Referendum/ Approval Required	Substantive Criteria/Review (reviewed by)	Adjacent Municipality Restrictions
Minimal Review States						
Delaware	No	Incorporation by Special Legislative Act (no statutory guidelines)				
Vermont	Yes	✓				
New York	Yes	✓	✓ (town clerk/ supervisor)	✓		
Texas	No	✓	✓ (county court)	✓		
Missouri	Yes	✓	✓ (county commission)	✓		✓*
Nebraska	Yes*	✓	✓ (county commission)			✓*
Louisiana	No (parishes)	✓	✓ (registrar of voters)	✓	✓*	
Mid-Level Review States						
Maryland	No	✓	✓ (county commission or council)	✓	✓ (organizing committee followed by county commission or council)	
New Mexico	No	✓	✓ (county commission)	✓	✓* (incorporation review team/ county commission)	
Illinois	No*	✓	✓ (circuit court)	✓	✓* only in counties between 150,000 and 1,000,000 (regional planning board)	✓*
Substantive Review States						
Florida	No	Villages are Incorporated by State Special Legislative Act as guided by statutory requirements	✓ (state legislature)		✓ (state legislature)	✓*

Comparing State Village Incorporation Provisions, continued

State	State Has Incorporated Towns or Townships	Population and Territory Requirements	Petition and Signature Review (presented to/ reviewed by)	Public Referendum/ Approval Required	Substantive Criteria/Review (reviewed by)	Adjacent Municipality Restrictions
Michigan	Yes	✓	✓ (State Boundary Commission)	✓	✓ (State Boundary Commission)	
Ohio	Yes	✓	✓ (county commission)	✓	✓ (county commission, public hearings)	✓*
West Virginia	No	✓	✓ (county commission)	✓	✓ (county commission, public hearings)	✓
North Carolina	No	✓	✓ (joint legislative committee)	✓	✓ (joint legislative committee)	✓
Wisconsin	Yes	✓	✓ (county court)	✓	✓ (State Boundary Commission)	✓*

* Indicates that a qualification or explanation of the requirement is provided in the summary of the state's village incorporation procedures below.

States With Minimal Review of Proposed Village Incorporations

Those states herein categorized as minimal review are limited to compliance with statutorily prescribed population and territory requirements, boundary specification rules (whether by map, metes and bounds, or reference to existing districts), and the verification of specified petition and referendum requirements. These states do not create any mechanism for addressing the merits of incorporating subjecting the decision to ballot approval, nor is any consideration given to municipalities adjacent to or contiguous with the proposed village incorporation. That is, required review is largely technical, focusing on compliance with statutory requirements, rather than substantive (assessing the overall merits, necessity, or impact of the proposed incorporation). Statutory references are provided in [Appendix B](#).



Delaware

The incorporation of new municipalities is dependent upon a special act of the state legislature. Because there are no statutory provision or legislative requirements guiding incorporation, Delaware is included in this summary among states with minimal review. With almost no unincorporated territory remaining in the state, new village incorporations are rare.



Vermont

There are very few residents living in unincorporated territories in Vermont. When the majority of voters in a territory containing 30 or more houses petition at a town meeting, a town select board “shall establish the bounds of such village and cause a description thereof, by its name and bounds, to be recorded in the office of the town clerk and posted in two or more public places in such village. The residents in such village shall thereupon become a body politic and corporate with the powers of a public corporation, be known by the name given in such description, by that name may sue and be sued, and hold and convey real and personal estate for the use of the corporation.” The charter becomes effective upon review and amendment by the Vermont legislature.³⁵



Texas

Texas’s municipal incorporation statutes impose territorial and population requirements dependent on the size of the proposed incorporation which also determines municipal classification type (A/B/C/ and Home Rule municipalities). Previously unincorporated areas may incorporate as a Type A General Law municipality if it has at least 600 residents.

If the town has fewer than 2,000 residents, it must not occupy more than two square miles of surface area. If it has between 2,001 residents and 4,999 residents, it must be smaller than four square miles. If it has 5,001 to 9,999 people, it must be smaller than nine square miles. They may incorporate as a Type B General Law municipality if it has a population of 201 to 9,999 inhabitants. There is no size restriction for this type of municipality. A town can apply to become a Type C General Law municipality if it has between 201 and 4,999 residents. If the town has fewer than 2,000 residents, it must not occupy more than two square miles of surface area. If it has between 2,001 residents and 4,999 residents, it must be smaller than four square miles and must establish a city commission after incorporation. Home rule municipalities also require the submission of the proposed charter at the time of petition. Incorporation petitions are submitted to the county court whose review is limited to statutory and petition requirements. The requirement that the voters in the territory to be incorporated approve at a public referendum imposes a democratic check in which the residents exercise local control over the final decision to incorporate.



Missouri

Missouri law authorizes village incorporations whenever two-thirds of the taxable inhabitants of any town or village present a petition to the county commission setting forth the metes and bounds of their village and commons. Upon the county commission's satisfaction that the "petition is reasonable," they may declare it incorporated.³⁶ Territories of greater than 500 in population may choose to incorporate as cities (rather than villages), and incorporated villages that exceed 500 may reincorporate as a city.

Missouri law prohibits the incorporation of a village adjacent to or within two miles of the limits of a first, second, or fourth class, or charter city *unless* they are located in different counties or the proposed village is located in a county of the first class (between 82,000 and 82,100). Following a petition signed by a number of voters equal to 15 percent of the votes cast in the last gubernatorial election in that territory, any proposed village incorporation that *is within the two-mile area of an existing municipality* will be presented to the existing city as a request for annexation. If action taken by the existing city is unfavorable to the petition, or if no action is taken by the existing city on the petition, then the village may be incorporated after the expiration of one year from the date of the petition and upon a favorable majority vote on the question. In this way, Missouri gives cities the option of preventing new village incorporation within two miles of their boundary through annexation of that territory.



Nebraska

Nebraska has minimal requirements for review of village incorporations. Upon a petition of two-thirds of the taxable inhabitants, fully described in metes and bounds, the county commission may declare the village incorporated if the petition is deemed "reasonable." The statute defines reasonable review as a finding by the majority of the county commission that the signatures meet the statutory requirements "*except that the county board shall not declare a proposed village incorporated or enter an order of incorporation if any portion of the territory of such proposed village is within five miles of another incorporated municipality.*"³⁷

Judicial interpretations have defined the county board's authority as ministerial and no referendum is required to approve the incorporation. Unless challenges are raised within one year of the county board's declaration, it is presumed that the incorporation is valid regardless of deficiencies in the record.³⁸



Louisiana

In Louisiana, the residents of an unincorporated areas of more than 200 in population may petition for village incorporation with the signatures of 25 percent or more of the electors residing in the area proposed for incorporation.

By statute, the petition must include:

- a territorial description of the area to be incorporated, including affirmation that it is contiguous;
- a statement of the assessed value of the real property;
- a listing of public services to be provided and provision plans;
- designation of the municipality's name;
- the names of two or more persons of contact for the petition.

Upon verification of the registrar of voters for the parish in which the village is located, the certificate is forwarded to the governor who, upon determining compliance with the territorial and population requirements, "shall" call for a special election with majority approval at referendum required for the incorporation to become effective.

The petition requirements do extend beyond population and territory requirements to include a listing of public services to be provided and an assessment of the value of real property within the proposed village. Ostensibly, this would give the voters a somewhat better understanding of the services to be provided by the new village and the tax base available to support them, but state law specifies the criteria by which the merits of the incorporation can or are to be evaluated, and there is no requirement for a public hearing, and no gubernatorial discretion in the review beyond determination of compliance with statutory and population requirements.³⁹ Louisiana is thus included with the minimal review states.

States with Mid-Level Review of Proposed Village Incorporations

Mid-level review states are those which, in addition to population and territorial requirements, include statutory criteria related to the fiscal capacity, services, and the adequacy of the tax base of the proposed incorporation. These states designate an external reviewing body (a county commission, review committee, or state legislature) to consider the merits of the proposed incorporation per statutory criteria. This review body generally does not have authority to enact or block the proposed incorporation, but the hearings provide an airing of additional substantive criteria which may inform the residents' vote on the incorporation.



Maryland

Village incorporation in Maryland requires a territory with at least 300 residents and a petition signed by at least 20 percent of voters registered to vote in county elections and owners of at least 25 percent of the assessed valuation of the real property within the area (or alternatively, by 25 percent of registered voters). In addition to boundary description and proposed municipal name, a copy of the proposed charter must be submitted as part of the petition. The petition is verified by the county commission (or council) for signature and petition requirements. An organizing committee will review the proposal with input from the county and at a public hearing on the proposed incorporation, issuing a final report. The committee's report on the charter is statutorily required to include statements describing:

- the likely fiscal effect of the proposed incorporation on residents of the proposed municipality, residents in the vicinity of the proposed municipality, and the county;
- the services that the proposed municipality is expected to provide; and
- the impact that the proposed incorporation is expected to have on property tax rates.

Between 40 and 60 days after receiving the report, the county commissioners (or council) will issue a resolution for a public vote on the proposed incorporation or otherwise indicate in writing the basis for its rejection and procedures for reconsideration (with notice and public hearings). After the hearing and reconsideration process is completed, the county commissioners or county council, by resolution, shall affirm the rejection or approval of the referendum request. If approved by a majority at referendum, the county commission will (within 10 days) issue a proclamation to that effect with incorporation taking effect under the charter 30 days later. If rejected by the electors, a proclamation that the incorporation was not approved will be issued by the county commissioners.



New Mexico

New Mexico authorizes residents to petition the board of county commissioners of the county in which the greatest portion of the territory proposed to be incorporated lies to incorporate as a municipality. The petition must be signed by at least 200 electors residing in the territory to be incorporated for at least six months prior to signing or the owners of not less than 60 percent of real property within the territory.

In addition to an accurate map and boundary descriptions, the petition must describe the municipal services the proposed municipality will provide and the details of how the municipality will generate sufficient revenue to cover the costs of providing

those services; along with sufficient funds to conduct a census of the territory to be incorporated. The municipal services and revenue plan must:

- demonstrate that the proposed municipality will provide at least three of the following services: (1) law enforcement; (2) fire protection and fire safety; (3) road and street construction and maintenance; (4) solid waste management; (5) water supply or distribution or both; (6) wastewater treatment; (7) stormwater collection and disposal; (8) electric or gas utility services; (9) enforcement of building, housing, plumbing, and electrical codes and other similar codes; (10) planning and zoning; and (11) recreational facilities
- and that it will have a tax base sufficient to pay the costs of those services

The county must forward the petition to the local government division of the department of finance and administration, which convenes a municipal incorporation review team comprised of the director of the local government division (or designee); the secretary of taxation and revenue (or designee); a representative of the county in which the proposed municipality is located and a representative of the New Mexico municipality (advisory only).

The review team evaluates the municipal services and revenue plan to determine whether it meets statutory requirements and reports its findings and recommendations to the board of county commissioners. If the review team finds that the proposed municipality does not meet the requirements of that article, the review team shall notify the board of county commissioners and the petitioners of deficiencies in the petition. A notification of deficiency suspends the attempt to incorporate. Petitioners have three months from the date of notification of deficiencies to submit an amended plan to the review team. If the amended plan is rejected by the review team for deficiencies, petitioners may not submit another petition to incorporate an area until at least one year after the date of that rejection.

If recommended by the review team, the county commissioners have 30 days to decide if they have complied with all of the requirements and after a determination that all of the conditions for incorporation have been met, they will schedule a public election on the question of incorporation. Incorporation becomes effective in January or July (depending on when the referendum was held) and New Mexico's statutes provide for judicial challenge.



Illinois

The village incorporation procedures in Illinois specify territorial and population requirements that are specific to the size of the county in which the incorporation is proposed. In counties that are less than 150,000 in population, the proposed village must not exceed two square miles, must have at least 200 inhabitants in nonmobile dwellings, and a petition signed by at least 35 electors residing in the area to be incorporated. For proposals in larger counties, the statute stipulates the precise conditions under which incorporation

may be pursued depending on both the size of the proposed village and the county in which it is located. For example, the incorporation of a village between 1,400 and 1,600 in population that is located in a county between 600,000 and 650,000 in population must include a contiguous body of water of specified acreage. Additionally, it must provide a comprehensive plan that details the service level and cost, and requires round-the-clock law enforcement upon incorporation, but need not obtain consent of existing municipalities or comply with county development plans. Such level of detail suggests that specific incorporation controversies have been accommodated by the enactment of special legislative provisions applying to selected municipalities only into the state's general laws.

Illinois law includes some restrictions on incorporations relative to existing municipalities. For proposed villages with less than 7,500 residents that are within 1.5 miles of an existing municipality, the consent of the preexisting municipality must be obtained. Such consent is not needed, however, in counties between 240,000 and 400,000 in population provided that the proposed village is at least three square miles and 5,000 inhabitants (in nonmobile dwellings); or in a county between 316,000 and 318,000 if the area to be incorporated does not exceed one square mile, has between 1,000 and 1,500 inhabitants, and is located within 10 miles of a county with a population of less than 150,000; or is a county between 400,000 and 410,000 inhabitants, does not exceed one square mile, contains at least 400 inhabitants, and is located in a township adjacent to a county of less than 150,000 inhabitants. Additionally, state law specifies that a portion of an incorporated village or town may also petition to become a new village provided that the majority of electors in the existing town or village as well as the majority of electors residing in the territory to be separately incorporated, approve. The "secession" of a portion of an existing town or village into a new village, in other words, must be approved by dual majorities of both the existing and the to-be-incorporated bodies politic.

A limited substantive review of incorporations in Illinois occurs in counties between 150,000 and 1,000,000 in population, which have adopted a regional plan or have created a regional planning commission. In such cases, prior to a court's order scheduling the public referendum, the county board must make a finding that:

- the proposed incorporation is compatible with the official plan for the development of the county, and
- the lands described in the petition as intended to be embraced in the village constitute a sufficient tax base as will insure the ability of the village to provide all necessary municipal services to its inhabitants.

If no such showing is made, the court shall deny the petition. The review, in terms of the criteria, addresses both fiscal capacity of the proposed incorporation and its coherence with the regional planning of the larger, existing metropolitan area limited to counties with high populations).

States with Substantive Review of New Village Incorporations

A number of states have incorporation procedures which provide some level of substantive review of the merits of the proposed incorporation in terms of fiscal and service capacity and its impact on the region or adjacent municipalities. These states additionally designate an external reviewing entity with varying authority to recommend or deny the petition.



Florida

In Florida, the incorporation of municipalities (other than mergers) are by special legislative act. The statutes require a feasibility of the proposed incorporation that includes the following criteria:

- a territorial description and map
- the major reasons for proposing the boundary change
- characteristics of the area, including:
 - current land use designations applied to the subject area in the county comprehensive plan;
 - current county zoning designations applied to the subject area;
 - a general statement of present land-use characteristics of the area;
 - a description of proposed development and associated timelines;
 - a list of all public agencies, such as local governments, school districts, and special districts, whose current boundaries falls within the boundary of the territory proposed for the change or reorganization;
 - a list of current services being provided including, but not limited to, water, sewer, solid waste, transportation, public works, law enforcement, fire and rescue, zoning, street lighting, parks and recreation, and library and cultural facilities, and the estimated costs for each current service;
 - a list of proposed services to be provided within the proposed incorporation area and the estimated cost of such proposed services;
 - names and addresses of three officers or persons submitting the proposal;
 - evidence of fiscal capacity and an organizational plan as it relates to the area seeking incorporation that, at a minimum, includes;
 - o existing tax bases, including ad valorem taxable value, utility taxes, sales and use taxes, franchise taxes, license and permit fees, charges for services, fines and forfeitures, and other revenue sources, as appropriate;
 - o five-year operational plan that, at a minimum, includes proposed staffing, building acquisition and construction, debt issuance, and budgets;

- o data and analysis to support the conclusions that incorporation is necessary and financially feasible, including population projections and population density calculations, and an explanation concerning methodologies used for such analysis;
- o evaluation of the alternatives available to the area to address its policy concerns;
- o evidence that the proposed municipality meets the requirements for incorporation pursuant to §165.061.

The degree to which the Florida state legislature exercises independent discretion in the review of the statutory criteria or merely defers to local authority would require a case-by-case analysis of incorporation petitions not undertaken here. In terms of the procedures outlined in state law, Florida is classified here as a substantive-level review state insofar as the law grants discretion to the legislature to evaluate the merits under a broad and wide-ranging set of criteria that extend beyond local interest to include an evaluation of the impact of the new municipality on regional, statewide interests.



Michigan

All new city or village incorporations, consolidations, and annexations in Michigan are reviewed by the State Boundary Commission.⁴⁰ Proposed consolidation and annexation must follow the same procedures. The only exception is for a village which constitutes all the remaining territory of a township.⁴¹ The commission is comprised of three members appointed by the Governor and two members appointed by the chief probate judge of the county in which the territory is located.

The commission's review of the petition proceeds in three stages: a legal sufficiency meeting (in which the petition requirements are reviewed); a public hearing; and a recommendation meeting wherein the members may recommend approval, denial, or modification of the petition. The criteria considered by the commission are spelled out in the statute and include:

- Population; population density; land area and land uses; assessed valuation; topography, natural boundaries and drainage basins; the past and probable future of urban growth, including population increase; and business, commercial, and industrial development in the area.
- Comparative data for the incorporating municipality and the remaining portion of the unit from which the area will be detached is also considered.
- Need for organized community services; the present cost and adequacy of governmental services in the area to be incorporated; the probable future needs for services; the practicability of supplying such services in the area to be incorporated; the probable effect of the proposed incorporation and

of alternative courses of action on the cost and adequacy of services in the area to be incorporated and on the remaining portion of the unit from which the area will be detached; the probable increase in taxes in the area to be incorporated in relation to the benefits expected to accrue from incorporation; and the financial ability of the incorporating municipality to maintain urban type services in the area.

- The general effect upon the entire community of the proposed action and the relationship of the proposed action to any established city, village, township, county, or regional land-use plan.

A denial by the commission is final. If the commission issues an order approving incorporation, a petition may be filed for a referendum on the proposal allowing the voters to accept or reject the incorporation. If incorporation is approved by the voters, the incorporation must be finally accomplished through the existing process of drafting and adopting a village charter following the charter commission elections and proceedings established by the Village Home Rule Act: "Otherwise the incorporation shall not take effect and no further proceedings on the petition shall take place."⁴² If the second (final) charter fails to secure majority approval or is not submitted within a three-year window "the incorporation proceedings are ended."⁴³



Ohio

The municipal incorporation laws of Ohio specify basic territorial and population requirements: at least two square miles and 800 persons per mile and an assessed per capita property valuation of over \$3,500 per capita. The petition requires signatures of at least 50 percent of the registered voters as determined by the total number of votes cast within that territory for the office of governor at the preceding general election for that office and is presented to the county commissioners for a hearing at which both the supporters and opponents of the incorporation may present their position. In cases where there is an existing municipality within three miles of the proposed village, the commissions may not act on the incorporation unless either of the following applies:

- A. An annexation proceeding which included the territory within three miles of an existing municipal corporation has been attempted within two years preceding the date of filing of the incorporation petition under section 709.02 of the Revised Code but failed because the existing municipal corporation took unfavorable action or because the existing municipal corporation took no action on the petition for a period of 120 days after the petition was presented to the legislative authority of the municipal corporation as required in section 709.04 of the Revised Code; and
- B. there is furnished to the board of county commissioners a copy of a resolution, passed by the legislative authority of each existing municipal corporation within the three-mile area approving the petition for incorporation.

Under 707.07, for an order of incorporation to be granted by the county commissions, it must be determined that:

- The territory included in the proposed municipal corporation is compact and is not unreasonably large;
- municipal services, such as police and fire protection; street construction and maintenance; sanitary and storm sewers; planning, zoning, and subdivision control; and parks and recreational facilities are capable of being financed by the proposed municipal corporation with a reasonable local tax, using the current assessed valuation of properties as a basis of calculation; and
- the general good of the community, including both the proposed municipal corporation and the surrounding area, will be served if the incorporation petition is granted.

Any village which surpasses 5,000 electors will automatically be recertified as a city under Ohio law. While Ohio does not require a public vote as a democratic check on new incorporations, its laws authorize the county commissioners to consider the “general good” of the community and surrounding area before approving the incorporation.



West Virginia

In West Virginia, an unincorporated territory may incorporate as a village if that area is not currently within any urban municipality and has an average of not less than 500 inhabitants per square mile if larger than a square mile (or at least 100 inhabitants if less than one square mile). Petitions must present the county commission with a proposal that includes:

- a map and boundary description;
- the proposed extension of water mains and sewer outfalls if such utilities are to be provided by the municipality as prepared by a professional engineer or licensed surveyor;
- a statement that the area meets territorial and population requirements;
- plans for the provision of services including police protections, fire protection, solid waste collection, water and sewer services, and street and maintenance services from the date of incorporation;
- a statement of impact on rural fire department services and insurance rates in the area;
- a statement of impact of municipal finances.

Per the statute, the creation of a new municipality *is prohibited if the new incorporation is within close proximity to a municipality capable of more efficiently providing services, or is not in the best interest of the county as a whole, considering factors such as*

topography, cost and benefits, recreational land and parks use, and normal growth and development in the present as to possible future uses so as to prevent hardships and inequalities. West Virginia is thus the only state to include elements of social justice in its review of newly incorporated municipalities.

The county court is required to conduct hearings on the proposed incorporation and shall dismiss the petition if the requirements of the statutory article have not been met. If the requirements are determined to have been met, petitions must pay costs of a census to ensure population and territorial requirements have been met. Upon a positive report of the census enumerators, the county court will schedule an election where electors may cast votes for or against incorporation. County commissioners will certify the election outcome. West Virginia law further provides for judicial review of the incorporation proceedings in the event of legal challenges.



North Carolina

In North Carolina, all new municipal incorporations must undergo the review of a Joint Legislative Commission on Municipal Incorporations which is comprised of six members who are appointed to two-year terms. The committee membership includes two state senators, two house members, one city manager (appointed by the senate president pro tempore), and one county manager appointed by the speaker of the house. The commission reviews the petition requirements which include:

1. A petition signed by 15 percent of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area. The signature petition must be verified by the county board of elections.
2. A proposed name for the city; a map of the city; a list of proposed services to be provided (at least 4 of 8 authorized by law); the names of three persons to serve as the interim governing board; a proposed charter; a statement of the estimated population; assessed valuation; degree of development; population density; and recommendations as to the form of government and manner of election.
3. A statement that the proposed city will have a budget ordinance with an ad valorem tax levy of at least \$.05 on every \$100 valuation upon all taxable property.
4. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed city must propose either to provide police service or to have services provided by contract

with a county or another city that proposes that the other government be compensated for providing supplemental protection.

A municipality can be incorporated as a city, town, or village, as in North Carolina there is no legal distinction between the three forms. In addition to public notice requirements, petitioners must notify the county in which the new incorporation is to occur, all municipalities included within that county, and all municipalities within other counties that are located within five miles of the proposed municipality of the intent to incorporate. Upon verification that all petition requirements have been met, the Commission will engage in substantive review of the following criteria:

- Nearness to another municipality (with the requirement that incorporation must be rejected if within specified distance of larger municipalities: within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, with specified exception)
- Population requirements
- Development requirements
- Inclusion of already incorporated territory
- Plans for development, services, and fiscal impact on other municipalities

Per its statutory guidelines, the Commission may not positively recommend incorporation without the specified assessment of the impact of the incorporation on other municipalities and indications that the new incorporation will provide minimal specified services. A positive recommendation of the Commission to the General Assembly may be recommended for public approval at a referendum if the petition did not contain 50 percent of registered voters.



Wisconsin

In Wisconsin, petitions for incorporation of a village or city must be preceded by a notice of intent and signed by 50 or more individuals who are both electors and freeholders (25 if the proposed municipality is less than 300 in population). The petition and proposed boundaries are filed in county circuit court for a review and a hearing.⁴⁴

If an incorporation involves the portions of two or more towns, it cannot by statute be incorporated “unless the town board of each town adopts a resolution approving the incorporation.” The law also authorizes municipalities with boundaries contiguous or overlapping (i.e., school districts) to the proposed incorporation to be parties to the hearing. By resolution (two-thirds approval required), the governing body of such an already incorporated municipality to annex the territory of the proposed incorporation may be filed.⁴⁵

The hearing conducted by the circuit court reviews statutory standards for the approval of a new municipal corporation.⁴⁶ If such standards are not met, the petition shall be dismissed. Successful petitions are then referred to a board which conducts review of the requirements, either dismissing or granting the petition to incorporate.

The board may approve for referendum only those proposed incorporations after consideration of the following requirements:

- Characteristics of territory. Whether the territory is reasonably homogeneous and compact;⁴⁷ accounts for natural boundaries, including soil basins and watersheds; proximity to transportation; previous political boundaries; boundaries of school districts; and shopping and social customs. If an isolated municipality, whether it has a “reasonably developed community center” or center of community activity.
- Territory beyond the core. Whether territory beyond the most densely populated has taxable properties and potential for residential or other urban land-use development on a substantial scale within the next three years. The board may waive these requirements to the extent that water, terrain, or geography prevents the development.
- Public Interest: Whether the incorporation is in the *overall public* interest:
 - Tax revenue. Whether present and potential sources of tax revenue appear sufficient to defray the anticipated cost of governmental services at a local tax rate which compares favorably with the tax rate in a similar area for the same level of services.
 - Level of services. Whether the level of services desired or needed by the residents of the territory compare those to the level of services offered by the proposed village and the level available from a contiguous municipality.
 - Impact on the remainder of the town.
 - Impact on the metropolitan community. Requires an express finding that the proposed incorporation will not substantially hinder the solution of governmental problems affecting the metropolitan community.

“Whether incorporation would benefit the proposed village area is not the standard for allowing incorporation.”⁴⁸ If an incorporation is recommended by the board, public approval at referendum is required.

Conclusion: Is it Time for State Legislative Action in New York?

New York's laws currently do not provide for a structured review of the merits of incorporation — from either the perspective of the prospective village (i.e., does it have the requisite fiscal and service providing capacities, what will the impact be on local property taxes) or from the perspective of preexisting adjacent communities (i.e., how will formation of a new village impact the fiscal and environmental well-being of the remaining township, impact adjacent communities, or comply with county or regional planning). Review of the town supervisor(s) and of the courts (if challenged) is strictly limited to compliance with basic statutory requirements.

Moreover, the state's laws regarding municipal formation and boundary change do not work in concert. Unlike incorporations, annexations, governed by Article 17 of the General Municipal Law (GMU), require substantive consideration that the proposed annexation is in the overall public interest, allowing for an "adjudication and determination, *on the law and the facts*, in a proceeding initiated in the supreme court, of the issue..."⁴⁹ Boundary change through annexation, in other words, affords more consideration as to the merits than does the creation of an entirely new general service providing government. While, the Empowerment Act, accompanied by various measures like tax credits and property tax caps designed to incentivize and pressurize dissolutions, mergers, and other efficiencies have produced modest results, in part, because village governments, once formed are durable. Residents [resist the dissolution of their village corporation](#) even where there are potential property tax savings that may result from transferring property and administration to the town. Thus, despite state-level incentives and laws that have made it easier for citizens to initiate and vote on dissolution, more villages have rejected than approved dissolution when presented with the question at the polls. Meanwhile, new villages continue to be created (albeit in small numbers) under procedures that impose only minimal requirements and review.

Recent case studies demonstrate the complexity of issues and level of public divisiveness that accompanies questions of incorporation and dissolution. Because incorporation laws do not provide a statutorily-guided mechanism for review on the merits, these issues are fought out in the venue of public debate, frequently spilling over into village, town, and county elections. The situation in Orange and Rockland counties has become particularly untenable as the residents there struggle with how to advance their respective self-interests while still being good neighbors to one another.⁵⁰ Without minimizing the vitriol that has accompanied those public debates, bitter fights over boundary changes (annexations, incorporations, and dissolutions)

The Empowerment Act, accompanied by various measures like tax credits and property tax caps designed to incentivize and pressurize dissolutions, mergers, and other efficiencies have produced modest results, in part, because village governments, once formed are durable.

and the concerns over local versus regional interest which accompany them, are by no means unique to the growth of ultraorthodox communities in the Hudson Valley area. Indeed, such divisiveness and narratives creating an “us versus them” are common in *both village incorporation and dissolution efforts* historically and across the state. Viewing recent incorporation controversies in isolation from other municipal boundary changes (annexation, dissolution) does little to mitigate to the simmering tension.

Similarly, writing legislation around specific controversial cases has proven unsuccessful and even counterproductive. Legislation introduced around the battles in Edgemont and in the Orange and Rockland county cases, have been perceived as non-neutral attempts to thwart a specific annexation or incorporation effort. The acrimony in Edgemont prompted intervention by the New York State Senate majority leader who appointed a mediator in an effort to resolve the impasse between the would-be village residents and the town. The local politics of individual cases arguably prevents the state legislature from adopting a comprehensive perspective of review necessary to address the persistent and broad range of complex issues which arise in modern incorporation efforts.

Since 2007, there have been a number of state legislative proposals related to the incorporation of villages as summarized in [Appendix C](#). Most of these proposals entail only modest adjustments to the existing incorporating provisions. Only two have been enacted into law:

- L. 2014, Chapter 30 allows any new coterminous town-village established after July 1, 2012 to receive Citizen Reorganization Empowerment Grants (CREG) and Citizen Empowerment Tax Credits (CETC) when operating as a town or village, not both. The legislation encourages town-village reorganizations by ensuring eligibility for grants that incentivize the elimination of duplicative layers of governments.
- L. 2012, Chapter 190 altered annexation procedures of Article 17 (§703) of the General Municipal law to allow annexation procedures to be initiated by municipal boards and to provide notification to nonresidential property owners (those who own property parcels in the area to be annexed but are not eligible to vote in the annexation proceedings).

Proposals by local state senators, offered in partial response to the controversies of the Orange County cases, successfully passed the legislature in 2015 and 2016, but were vetoed by the governor. Their bills would have required that annexations involving the provision of water or sewer services be subject to county planning review under Section 239 of General Municipal Law. The proposed law did not grant authority to county governing for approval but subjected the proposed annexation to the review and recommendation of the county planning authority, ostensibly to better guide residents in approving the annexation at election. Additionally, Section 239 provided that where the county planning authority recommends rejection or modification of the proposed annexation a supermajority of the referring body (local legislative authority) would be required to override. The practical effect of the legislation, according to New York’s Department of State analysis would be that the local body making the annexation referral would have to determine whether the annexation was in the

“overall public interest” and to await (for at least 30 days) the recommendation of the county or regional authority. In cases where the county recommends against the bill, the local body would need to override by a super-majority and/or make the proposed modifications.⁵¹

The proposals received the support of a sizeable coalition of adjacent communities concerned about the environmental impacts of unchecked growth on local water supplies. Opponents of the bill dismissed the environmental and planning rationales, decrying the effort as an intentional effort to “build an immovable fence around the Hasidic community — to turn it into a virtual ghetto that cannot grow as other communities around it naturally expand. Why? Because their neighbors don’t want any more Hasidism.”⁵² The mayor of Kiryas Joel similarly advised the governor that the bill represented an “attack” on the village and created a dangerous precedent. The New York Council of Mayors (NYCOM) also registered their opposition, arguing that the proposal would restrict local authority. In their view, current annexations laws already establish a “conservative process with numerous checks and balances in place to ensure that the process is deliberative and that the interests of all the stakeholders are represented.”

Other proposals have not made it out of legislative committee also represent only modest revision to contemporary procedures. The thrust of proposed legislation by another local state assemblyman was to increase the population requirements (from 500 to 2,000), to raise the petition signature requirement (from 20 percent to 50 percent), to strike the provisions which authorize a certain percentage of landowners to petition for the formation of a new village, and to subject the incorporation to the approval at referendum of residents of both the proposed village *and the town outside of proposed-village residents*. Per the legislative memo accompanying the bill:

The current village creation process is outdated and overly simplified by modern standards. The current process has no checks and balances and there are several examples across the state of the village creation process being exploited to negative ends.... The outdated requirements make it far too simple for village creation to be used for the wrong purposes. The time has come to update the village creation process in New York. We need to have the minimum standards catch up with modern times and we also need to ensure that duplicate levels of government are not unnecessarily created.”⁵³

A legislative proposal in 2019 would have suspended all municipal reorganization (i.e., incorporations, dissolutions, and consolidations) of villages and towns pending study and review by the New York Department of State. The intent of the proposal is to:

focus on the causes and consequences of the incorporation, merger, and dissolution of municipalities. When examining causes, the department shall consider how often the process to dissolve, merge, or incorporate a municipality is initiated and either succeeds or fails, and the fiscal, economic, social and demographic conditions of the populations of municipalities where the process to merge, dissolve, or incorporate were initiated. When examining the consequences, the department shall consider the effects to property taxes and municipal revenue including effects to local governments collocated with

the affected municipalities and the effect on the delivery of public services to the residents of the municipalities.⁵⁴

Their proposal focuses on understanding the impetus for municipal reorganization with emphases on the success rate and the consequences, including the tax impact and service delivery outcomes, for all affected municipalities. That emphasis reflects an underlying assumption that the motivation for reorganization is driven by fiscal stress and the metric for success is the impact on the underlying property taxes. The proposal correctly recognizes that state-level initiatives to encourage dissolution and consolidation have not addressed the question of whether communities that dissolve are better or worse off for that decision. But as recent incorporation controversies reveal, however, the motivations for municipal creation and dissolution go beyond the economic interests of residents. Voters have rejected dissolution even when property tax savings are projected and have pursued incorporation even when taxes are projected to rise. That is because village government incorporation and dissolution involve far more than fiscal effects — these are decisions over *who controls* community and residential character through the exercise of municipal zoning, land-use, and code enforcement powers. Incorporation laws, in other words, need to better channel the complex debates which attend local choices in municipal formation and reorganization.

While the call to suspend municipal boundary changes pending legislative study is a positive step, truly comprehensive revision of the state's incorporation laws would also necessitate a hard look at the evolution of statutory and constitutional home rule authority which has blurred the functional distinctions between municipal governments and granted equal constitutional footing in the exercise of local control. Are these various levels of general-service providing governments (county, town, city and village) functionally distinct and equally necessary, for example, in rural, suburban, and urban areas of the state? Such questions would entail a reevaluation of municipal classifications and powers and constitutional home rule protections.

New York's village incorporation laws are predicated on the idea of localized control in the formation of village government, but how *do* we define local interests and how local should local choice in such decisions be? The recent incorporation case studies present hard questions as to adequate fiscal capacity, the resulting property tax burdens, the appropriate locus of control over planning and development (village, town, or county), and the spillover impacts of new government formation (including the environmental impact on adjacent municipalities). The ability of a religious enclave to establish their own municipality is somewhat unique to New York and the growth of ultraorthodox communities. Defensive incorporations, designed to preempt a

New York's village incorporation laws are predicated on the idea of localized control in the formation of village government, but how do we define local interests and how local should local choice in such decisions be?

community falling subject to the land-use and zoning regulations of an embracing, adjacent, or even future municipality, or self-separation of affluent areas seeking to create their own governmental unit are not.⁵⁵

As demonstrated by recent controversies over village incorporation, New York's village incorporation procedures are not adequate to addressing the complex questions which arise around the decision of whether or not to incorporate. The questions surrounding village incorporation are complex but the scope of review required by New York is not. Relying solely on population and territorial requirements reflects an antiquated mentality conceived in an era of horses and buggies, when incorporation could be undertaken by any community of requisite population size and when the primary question was whether the citizens of the proposed village were willing to bear the increased costs of a village administration. In the modern context, those same laws allow a sizable new housing division to establish itself as a municipal entity so long as it meets minimal population and territorial requirements.

Village incorporation involves more than just the weighing of service desires against the resulting tax burden on residents. Rather, village incorporations reflect competing community desires for control over development and zoning decisions, the promotion of self-interests, a competition for political power, and for control of the preservation or development of a community's residential character. The creation of new village governments has an impact on adjacent or embracing communities who, under New York's laws, are largely left out of the incorporation equation. The establishment of village boundaries does not just denote legal jurisdiction over services and regulations but defines the community and the corresponding boundaries of obligation in terms of who is in, who is out, who has a say in village affairs, and who receives the benefits or carries the burdens of maintaining the municipal entity. New York is one of a handful of states with both a significant number of village governments and minimal review of new village incorporation. As the legislature continues to grapple with incorporation controversies, it may be time to look to other states for prospective models of legislative guidance.

Appendix A. Incorporation Requirements in New York State: 1847-2019

Incorporation Requirements in New York State: 1847-2019

	Territorial Requirement	Population Requirement	Consent of Property Owners Requirement	Other Changes
L. 1847 Ch 426	Any part of a town or towns and a territory more than one square mile in extent, containing not less than 300 persons per square mile	Not less than 300	No	Required judicial application, map, and local census requirements
L. 1897 Ch 414 §3	A territory not exceeding one square mile or an entire town, and not including a part of a [existing] village or city	Not less than 300	No	Added petition process: Petition signed by 25 residents who are adult freeholders to be presented to town (or towns) supervisor, specifying name of proposed village, listing names of inhabitants. Process also required notice and hearing on the proposal, with determination of validity of petition by town supervisor prior to being put to a public vote. Added a classification system for villages based on population.
1874	State constitutional ban on incorporation by special act			
L. 1899 Ch 56/L. 1902	Added and amended provisions for consolidation of adjoining villages			
L. 1899 Ch 154	A territory not exceeding one square mile or an entire town, and not including a part of a [existing] village or city	Not less than 200	No	Clarified grounds upon which objections to the proposed incorporation might be made at hearing: <ul style="list-style-type: none"> 1. unqualified signatures 2. territorial requirements not met 3. does not meet population requirement
L. 1903 Ch 139	A territory not exceeding one square mile or an entire town, and not including a part of a [existing] village or city	Not less than 200	Yes	Added to the petition process a requirement for the approval of owners of one-third of the assessed property in the proposed village; added failure of such to the list of potential petition objections at hearing; required attached list of inhabitants of proposed village and a \$50 deposit for costs incurred.

Incorporation Requirements in New York State: 1847-2019, continued

	Territorial Requirement	Population Requirement	Consent of Property Owners Requirement	Other Changes
L. 1904 Ch 35	A territory not exceeding one square mile or an entire town, and not including a part of a [existing] village or city or for incorporation in towns of more than 10,000 population	Not less than 200; or in towns of more than 10,000, not less than 1,000	Yes	
L. 1905 Ch 404				Added provisions requiring that petitions pay for costs of incorporation application and election in event incorporation fails at referendum
L. 1907 Ch 607				Added requirement that upon vote of incorporation a certificate be filed with the secretary of the state along with a true and correct map/description of the incorporated territory as final step of incorporation; authorized territory to be annexed by a village upon petition describing territory, listing inhabitants, and signed by majority of voters therein and owners of majority of value of property and written consent of majority of town board; to be approved by public referendum.
L. 1910 Ch 258 (amended by L. 1913 Ch 258)	Revised incorporation requirements where population is more than 50 and less than 200; territory not exceeding one square mile situated entirely within a town not already part of an existing city or village	Between 50 and 200	Yes	For incorporation where population is between 50 and 100, increased consent requirement to owners of real property constituting 3/4 the assessed value of the proposed village and approval by 3/4 the voters at referendum. Amended in 1913 to authorize institution of such incorporation proceedings by petition signed by 10 adult freeholders.
L. 1920 Ch 239	Revised incorporation requirements where population is more than 50 and less than 200; territory not exceeding one square mile situated entirely within a town not already part of an existing city or village	Between 50 and 200	Yes	Revised consent requirements to owners of 1/2 the assessed property value of the proposed village and approval by a simple majority at referendum

Incorporation Requirements in New York State: 1847-2019, continued

	Territorial Requirement	Population Requirement	Consent of Property Owners Requirement	Other Changes
L. 1921 Ch 453	A territory not exceeding one square mile or an entire town, and not including a part of a [existing] village or city and not less than 200	Not less than 200	Yes — for villages not less than 200, consent of owners of 1/3 assessed property; for more than 2,000, consent of owners of 1/3 assessed property or more than 1/2 freeholders of proposed villages	Revised consent requirements for villages over 2,000 to approval by owners of 1/3 assessed property of proposed village or approval of over 1/2 of resident free holders, subject to public referendum. Challenge provisions for petition amended to include challenges based on new consent requirements.
L. 1927 Ch 650	A territory not exceeding three square miles, or otherwise conforming to the boundaries of an entire town, or a school, lighting or fire district and not including any part of a city or village	Not less than 250	Yes	Petition by 25 adult, free holders residing in such a territory presented to the town(s) supervisor(s) and with the consent of owners of 1/3 the value of real property or 1/2 or more of the resident freeholders, accompanied by a list of inhabitants and a \$100 deposit
L. 1928 Ch 332				Clarified that the burden of proof in a hearing on an incorporation petition is on those raising the objections
L. 1933 Ch 392	Not exceeding three square miles or conforming to the entire boundaries of a town, fire, school, water, lighting district and not including any part of an existing village or city	Not less than 500	Yes	Increased number of adult freeholders bringing a petition to 50 and requiring that have sole residence or voted in last preceding election with the consent of owners of 1/3 the value of real property or in cases where population is more than 2,000 by either 1/3 owners of assessed property 1/2 or more of the resident freeholders, accompanied by a list of inhabitants (excluding summer residents and minors) and a \$100 deposit

Incorporation Requirements in New York State: 1847-2019, continued

	Territorial Requirement	Population Requirement	Consent of Property Owners Requirement	Other Changes
L. 1964 Ch 755 and Ch 756	Not exceeding three square miles or conforming to the entire boundaries of a town, fire, school, water, lighting district, and not including any part of an existing village or city	Not less than 500 regular inhabitants	Yes	Petition requirements revised to require at least 25 percent of resident owners of real property qualified to vote for town officers; owners of more than 50 percent in assessed valuation of real property (with clarification of how assessed). Petition requirements now include name, territorial, population, and consent requirements; list of regular inhabitants; proper description (in metes and bounds, by map, or description); certification of assessment values for verification of signatures; and \$100 deposit.
1968	Courts invalidate property ownership requirements for elections and referenda.			
L. 1972 Ch 892	Not exceeding five square miles or conforming to the entire boundaries of a town, fire, school, water, lighting district, and not including any part of an existing village or city	Not less than 500 regular inhabitants	No*	Petition requirements revised to require at least 25 percent of residents qualified to vote for town officers or owners of more than 50 percent in assessed valuation of the real property in the proposed village with details of how assessed and requiring name, territorial, population, and consent requirements; list of regular inhabitants, proper description (in metes and bounds, by map, or description); certification of assessment values for verification of signatures; and \$100 deposit. Hearing requirements and objections as to petition requirements with incorporation approved by referendum.
L. 2014 Ch 30	Allows any new coterminous town-village established after July 1, 2012 to receive Citizen Reorganization Empowerment Grants (CREG) and Citizen Empowerment Tax Credits (CETC) when operating as a town or village, not both.			

Appendix B. Statutory References for State Village Incorporation Laws

State	Incorporation Procedures Statutory Reference
Delaware	No Statutory Provisions Located
	165.022 Preemption; effect on special laws
Florida	165.0225 – Counties Prohibited from Requiring Consideration for Allowing Incorporation.
	165.041 – Incorporation; Merger.
Illinois	65 ILCS 35/ – Village Incorporation Validation Act.
	(65 ILCS 5/2-3-1) Division 3. Incorporation of Villages
	65 ILCS 5/2-1-1) General Provisions
Louisiana	LA Rev Stat § 33:1 (2018)
	RS 33:2 – Filing of petition; certification; forwarding to governor
	RS 33:4 – Legal action contesting an incorporation
	RS 33:5 – Appellate review
	RS 33:3 – Governor’s determination; special election
	RS 33:341 – Division into cities, towns, and village
	/RS 33:343 – Nomenclature; village, town, or city council
Maryland	§ 4-203. Minimum number of residents required
	4-204. Petition for incorporation
	§ 4-205. Report of organizing committee
	4-206. Submission of proposed municipal charter
	§ 4-207. Referendum request
	§ 4-208. Posting and publication
	§ 4-211. Tally and certification of election results
	§ 4-210. Nomination and election of municipal officers
	§ 4-215. Schedule for phasing in local income tax payments
§ 4-216. Comprehensive land use plan	
§ 4-209. Referendum; proclamation of result	

State	Incorporation Procedures Statutory Reference
Michigan	3-1895-I Chapter Incorporation (61.1...61.15)
	Section 61.1b Construction of act
	Section 61.1c Emergency financial manager; authority and responsibilities.
	61.1a Definitions.
	123.1007 Incorporation of village or city; initiation; petitions; signatures and filing; powers and duties of commission; census; other means of incorporation; incorporation of general law village or home rule village without change of boundaries.
	123.1008 Review of proposed incorporations; certifying nonconformance of petition; return of petition; public hearing; commencement of time period; notice of hearing; sufficiency or legality of petition.
	123.1009 Review of proposed incorporation; criteria.
Mississippi	123.1010 Denial or approval of proposed incorporation; revision of boundaries; referendum on question of incorporation.
	§ 21-1-1. Classification of municipalities.
	21-1-13. Preparing and filing of petition
	21-1-15. Publication of notice of proposed incorporation
	§ 21-1-17. Hearing on petition; decree
	§ 21-1-21. Appeal
	§ 21-1-23. Copy of decree sent to Secretary of State
	21-1-45. Electors' option to be included in or excluded from existing municipality; preparing and filing of petition
21-1-47. Proceedings in chancery court	
Missouri	Section 80.020 Towns and villages — how incorporated.
	72.130. No incorporation within two miles of existing city, where, exceptions.
Nebraska	17-201 Village, defined; incorporation; restriction on territory; condition.
	17-201.01 Villages; incorporation; presumption of regularity of proceedings.
New Mexico	3-2-1. Petition to incorporate area as a municipality; map and money for census.
	3-2-2. Characteristics of territory proposed to be incorporated as a municipality.
	3-2-3. Urbanized territory; incorporation limited within urbanized territory.
	3-2-6. Incorporation; notice of the election; registered voters to vote; appointment of election officials; conduct of election; question to be submitted; location of voting places.
	3-2-7. Incorporation; notice of the election results; publication or posting; filing of results; limitation on resubmission.
	3-2-9. Incorporation complete; judicial notice; defects in incorporation; appeal.

State	Incorporation Procedures Statutory Reference
North Carolina	Chapter 120 (General Assembly), Article 20 (Joint Legislative Committee on Local Government)
	Section 703.01 – Classification – federal census.
	Section 703.011 – Village with more than 5,000 electors becomes city.
	Section 707.01 – Incorporation of villages.
	Section 707.02 – Petition for incorporation as village.
	Section 707.03 – Petition presented to county commissioners.
Ohio	Section 707.04 – Existing municipal corporation to approve incorporation of territory within three miles of its boundaries.
	Section 707.07 – Order of incorporation.
	Section 707.13 – Filing, docketing, and hearing of petition.
	Section 707.14 – Proceedings if error is found.
	Section 707.28 – Division of property and funds when village or city is incorporated from township.
	Section 707.30 – Requirements for petition for special election on question of incorporation.
Texas	A/B/C Incorporation Rules Chapter 5/6/7 respectively
Vermont	§ 1301. Establishment of villages.
West Virginia	§8-2-1. Requirements for incorporation; size and character of territory; population.
	§8-2-2. Petition; survey and map.
	8-2-3. Hearing on petition; notice; dismissal.
	§8-2-5. Special election – Voting precincts; time for election; supplies; commissioners and clerks; notice.
	§8-2-7. County commission order declaring boundaries of city; certificate of incorporation of town or village; dismissal of proceeding.
	§8-2-8. Judicial review.
Wisconsin	61.188 Certain villages may become cities by charter ordinance.
	61.189 Villages of 1,000 may become cities.
	66.0203 Procedure for incorporation of villages and cities.
	66.0205 Standards to be applied by the circuit court.
	66.0207 Standards to be applied by the board.
	66.0211 Incorporation referendum procedure.

Appendix C. New York State Legislature Proposals Affecting Village Incorporation, 2007-19

Legislative Session	Bill Number	Short Description	Primary Sponsor	Last Action
2019-20	A03244	Authorizes absentee ballots in an election to incorporate a village	Abinanti	Local Government Committee, January 29, 2019
	A03381	Provides a procedure for village incorporation in a suburban town	Abinanti	Local Government Committee, January 29, 2019
	A06776	Relates to village incorporation	Schmitt	Local Government Committee, March 20, 2019
	A07997	Relates to incorporation of villages	Thiele	Local Government Committee, May 30, 2019
	S05793		Skoufis	Committed to Rules, June 20, 2019
	A08410	Suspends certain provisions relating to petitions for incorporation of a village	Abinanti	Local Government Committee, June 16, 2019
	A08411	Suspends certain provisions relating to petitions for incorporation of a village	Abinanti	Local Government Committee, June 16, 2019
	S06473	Suspends certain provisions relating to petitions for incorporation of a village	Gaughran	Referred to Rules, June 12, 2019
	S01657	Relates to referrals of certain annexation petitions	Skoufis	Referred to Local Government Committee, January 15, 2019
2017-18	A02871	Relates to the procedure for village incorporation; repealer	Thiele	Referred to Local Government Committee, January 3, 2018
	S01855		Croci	
	A08423	Provides a procedure for village incorporation in a suburban town	Abinanti	Amended and Recommitted to Local Government Committee, March 21, 2018
	A10231	Authorizes absentee ballots in an election to incorporate a village	Abinanti	Referred to Ways and Means, June 12, 2018
	S06728	Insures that the incorporation of a certain village in Westchester county does not have a significant adverse impact on the remaining town	Stewart-Cousins	Referred to Local Government Committee, January 3, 2018
	A01622	Relates to referrals of certain annexation petitions	Skoufis	Referred to Local Government Committee, January 3, 2018
S02051	Provides for notice with regard to annexation	Boniac	Referred to Local Government Committee, January 3, 2018	

Legislative Session	Bill Number	Short Description	Primary Sponsor	Last Action
2015-16	A06915	Alters the procedure for village incorporation with respect to determining population and objections to the petition for incorporation; repealer	Thiele	Referred to Local Government Committee, January 6, 2016
	A01622	Relates to referrals of certain annexation petitions	Skoufis	Referred to Local Government Committee, January 3, 2018
	A07639	Relates to referrals of certain annexation petitions	Skoufis	Vetoed Memo 186
	S05643		Larkin	
	A10210	Relates to referrals of certain annexation petitions	Skoufis	Vetoed Memo 214
	S07850		Larkin	
S01607	Provides for notice with regard to annexation	Boniac	Passed Senate, Delivered to Assembly and referred to local governments, June 6, 2016	
2013-14	A02051	Relates to coterminus municipalities	Cahill	Signed, Chapter 30
	S02787		Boniac	
	A04794	Alters the procedure for village incorporation with respect to determining population and objections to the petition for incorporation; repealer	Thiele	Held for consideration in local governments, May 28, 2014
	S06234	Provides for notice with regard to annexation	Boniac	Referred to Local Government Committee, January 8, 2014
2011-12	A07048	Alters the procedure for village incorporation with respect to determining population and objections to the petition for incorporation; repealer	Thiele	Referred to Local Government Committee, January 4, 2012
	S06053		Zeldon	Referred to Local Government Committee, January 4, 2012
	A03024	Relates to the annexation of territories by local governments	Calhoun	Referred to Local Government Committee, January 4, 2012, enacting clause stricken, February 8, 2012
	A05823	Authorizes two or more municipalities to agree to annex territory	Gunther	Signed Chapter 190
S04359	Young			

Legislative Session	Bill Number	Short Description	Primary Sponsor	Last Action
2009-10	A01017	Alters the procedure for village incorporation with respect to determining population and objections to the petition for incorporation; repealer	Thiele	Referred to Local Government Committee, January 6, 2010
	A01797	Relates to the annexation of territories by local governments	Calhoun	Held for Consideration in Local Government Committee, March 9, 2010
	A07430	Relates to voter approval of municipal annexation	Butler	Held for Consideration in Local Government Committee, March 9, 2010
	A08241 S05430	Authorizes two or more municipalities to agree to annex territory	Koon Aubertine	Referred to Local Government Committee, January 6, 2010
2007-08	A01067	Alters the procedure for village incorporation with respect to determining population and objections to the petition for incorporation; repealer	Theile	Referred to Local Government Committee, January 8, 2008
	A02534	Relates to the annexation of territories by local governments	Calhoun	Held for Consideration in Local Government Committee, May 8, 2008
	A03940	Authorizes two or more municipalities to agree to annex territory	Koon	Amend and Recommit in Local Government Committee, February 26, 2008
	S03231		Winner	Passed Senate, Delivered to Assembly and Referred to Local Government Committee

Endnotes

- 1 The calculation of average dissolution votes per year under the provisions of Article 19, in effect from 1972-2010, omits 5 dissolutions which were initiated and finalized under its provisions in the period of 2010-15. In other words, even though Article 19 was displaced in 2010, dissolutions that had been initiated and were underway were concluded under its provisions. Inclusion of those cases raises the annual average of dissolution votes conducted under Article 19 to .97 (42 votes over a span of 43 years).
- 2 As explained in our June 24, 2019 report, while there have been more dissolution votes initiated through the provisions of the Empowerment Act, the success rate (defined as dissolution approved at the polls) is lower (40 percent approved) than under Article 19 procedures (in effect from 1972-2010), which had a 60 percent approval rate. The higher approval rating under Article 19 is partially explained by the fact that, under its provisions, village boards had the ability to prevent the issue from reaching a public vote by stalling or dragging out the required study process. Thus, dissolutions which reached the ballot under Article 19 were more likely to have support.
- 3 These four levels of local government exercise different classes of power (as granted by the New York State legislature) but may be generally classified as general service providers. Over time, the functional authority of these units has become increasingly similar (and duplicative) while the extension of constitutional home rule protections has placed the units on equal constitutional footing with respect to their home rule (local law powers) and boundary change absent local consent. Municipal incorporation and dissolution is a form of boundary change. Under New York law, only villages may be incorporated and dissolved by a vote of village residents — towns may be consolidated (merged) but are exempt from the dissolution procedures established in the Empowerment Act.
- 4 Deon J. Hampton, “Signs of Revival Emerge in Once-Struggling Mastic Beach, Officials Say,” *Newsday*, September 28, 2018. Lisa Foderaro, “Long Island Village Votes to Disband 6 Years After Incorporating,” *New York Times*, November 25, 2016.
- 5 Newsday Editorial Board, “Brookhaven Can Help After Mastic Beach’s Village Failure,” *Newsday*, November 27, 2016.
- 6 For discussion of these cases and source material, see Lisa Parshall, “Historic Village Government Dissolution in New York State: 1830s-1850s,” (presented at the New York 2012 Conference, Albany, University of Albany (SUNY), November 15-16, 2012 (available upon request)).
- 7 Ibid.
- 8 The original proposal was for a Planned Development District (PDD), which allowed for zoning change requests in exchange for a public, community benefit, in this case a publicly accessible golf course. A PDD required approval of the town board. The revised proposal is for a Planned Residential Development (PRD) that developers argue does not require a zoning change as restricting access to the golf course to use by resident’s only rendered it an accessory, recreation-use under town law. The approval as a PRD places the matter before the town zoning board of appeals (ZBA).
- 9 New York Consolidated Law, Article 57 ENV §§ 57-0101 — 57-0137, Long Island Pine Barrens Maritime Reserve Act, <https://www.nysenate.gov/legislation/laws/ENV/A57>. The law was intended to subject the piecemeal zoning and land-use decisions of multiple municipal units to a comprehensive management plan under the supervision of commission.
- 10 New York Consolidated Laws, Article 2 VIL § 2-250 (2015), <https://www.nysenate.gov/legislation/laws/VIL/A2>.
- 11 Nancy Burns, *The Formation of American Local Governments: Private Values in Public Institutions* (New York: Oxford University Press, 1994).
- 12 Residents of Greenville/Edgemont had considered separating itself from the town of Greensburgh in 1965 due to “civic frustration” with their minority voice in zoning and development decisions, “Citizens Committee Seeks to Incorporate Greenville,” N.D., Frank C. Moore Papers, Box 17, Folder 2.
- 13 Article 78 of the New York State Civil Practice Law and Rules (CPLR) provides a mechanism for actions, or inactions, of a government agency or official to be challenged in court.

- 14 Bernstein v. Feiner, 95 NY3d 124 (N.Y. Sup. Ct. 2018).
- 15 Media reports in several of the Hudson Valley cases include allegations from Hasidic residents of ongoing harassment and intimidation. In Kiryas Joel, petitioners for the village of Seven Springs were reportedly physically attacked by Kiryas Joel community members opposed to the new village incorporation. The controversies in Rockland county have produced alleged harassment of a county legislator who was targeted by flyers accompanied by dog feces and rusty nails found in the driveways of residents in the hamlet of New City, New York. In the tiny village of Bloomingburg (Sullivan County), the clash between residents and the expanding Hasidic community led to a federal investigation, criminal indictments, and an effort by residents to dissolve the village so as to dilute the voting power of the growing Hasidic community. Dissolution was defeated at referendum on September 30, 2014, by a vote of 107-85 (57 percent opposed). The controversy began in 2006 with the proposed Chestnut Ridge housing development. The development was initially pitched as a luxury 125-unit housing project that would include a golf-course and pool available for municipal use. What was finally approved in 2009, following annexation of land by the village, was a development for 396 multifamily townhomes. Local residents were not initially aware that the developers behind the development had intended the division for members of the ultraorthodox community. An executive summary of the project, undisclosed at the time of proposal, demonstrated that they had advised investors Bloomingburg's small population meant that the homeowners of Chestnut Ridge, upon its occupancy, could effectively control the local government, its zoning and ordinances." That control would "provide an excellent and secure solution to the housing crises, to build a complete Hassidic/Torah community with all of its support facilities, and to be rewarded for the years of secret toil and investment with a very substantial return on investment." With the acquired powers of annexation, investors were assured that they could readily build out beyond the initial footprint of the development. After a village enacted moratorium and resulting lawsuits, the developers attempted to influence local elections. The level of irregularities attracted a federal investigation and FBI raids, which revealed that the ruse went so far as the staging of properties and creating false indicia of residency to increase Hasidic registration and turnout. In December 2016, two of the developers were indicted by a federal grand jury and pled guilty. The Town of Mamakating Planning Board enacted a resolution rescinding approval of the Chestnut Ridge development project based on fraudulent and misleading application and Environmental Impact Statements. The frictions in Bloomingburg and Sullivan County remain.
- 16 As Benjamin notes, allegations that village incorporation was motivated by an impermissible desire to discriminate against the ultraorthodox community was judicially rejected in challenges to the creation of Pomona, Wesley Hills, Chestnut Ridge, and Montebello (1398). Gerald Benjamin, "The Chassidic Presence and Local Government in the Hudson Valley," *Albany Law Review* 80, 4 (2016-17): 1383-464, http://www.albanylawreview.org/Articles/vol80_4/1383%20Benjamin%20PRODUCTION.pdf.
- 17 In 1989, the New York State legislature approved the creation of the Kiryas Joel Union Free School District to alleviate growing conflicts with the Monroe-Woodbury school district over the provision of education and special needs services of Hasidic youth. Following invalidation by the United States Supreme Court on Establishment Clause Grounds, the New York State legislature revised the law multiple times until it passed constitutional muster. The creation of a separate village government and corresponding school district in accommodation of the distinct needs of the Hasidic community has been both hailed as an exemplar for tolerance and accommodation, and criticized as a form voluntary segregation bordering on a theocracy.
- 18 Joseph Berger, "Dissidents Gain with Kiryas Joel Pact," *New York Times*, March 12, 1997.
- 19 Albert Samaha, "All the Young Jews: In the Village of Kiryas Joel, New York, the Median Age Is 13," *The Village Voice*, November 12, 2014, <https://www.villagevoice.com/2014/11/12/all-the-young-jews-in-the-village-of-kiryas-joel-new-york-the-median-age-is-13/>.
- 20 Kiryas Joel Alliance et al. v. Village of Kiryas Joel et al., 12-217-cv (2d Cir. 2012).
- 21 David N. Myers and Nomi M. Stolzenberg, "Kiryas Joel: Theocracy in America?," HuffPost, December 4, 2011, https://www.huffpost.com/entry/kiryas-joel-theocracy-in-america_b_1124505.
- 22 *Comprehensive Plan 2018*, Village of Kiryas Joel, Orange County, New York, adopted September 14, 2018: 18.

- 23 New York Consolidated Laws, Article 17 GMU § 702 (2014), <https://www.nysenate.gov/legislation/laws/GMU/A17> .
- 24 The owners of the Harriman Commons, which is split across the towns of Harriman and Monroe, had petitioned to join the villages of Woodbury and Harriman to avoid inclusion in the proposed new village.
- 25 Chris McKenna, “Seven Springs Petitioners want KJ Appeal Expedited, *Times Herald Record*, November 21, 2019.
- 26 *The New York State Guide* (Albany: J. Disturnell, 1842), <https://catalog.hathitrust.org/Record/009576950>; David Dudley Field, *New York Field Codes Series, 1850-1865* (Clark, NJ: The Lawbook Exchange, Ltd., 1998), <https://www.lawbookexchange.com/pages/books/21234/david-dudley-field/new-york-field-codes-series-1850-1865-5-vols>; Franklin B. Hough, *The New-York Civil List* (Albany: Weed, Parsons & Co., 1858), <https://catalog.hathitrust.org/Record/100855162>; Franklin B. Hough, *The New York Civil List* (Albany: Weed, Parsons & Co., 1860), https://books.google.com/books?id=fKxJAAAAYAAJ&source=gbs_book_other_versions; *Civil List and Forms of Government of the Colony and State of New York* (Albany: Weed, Parsons & Co., 1867), https://books.google.com/books?id=ej5wB9-S_gwC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false; Edgar A. Werner, *Civil List and Constitutional History of the Colony and State of New York* (Albany: Weed, Parsons, & Co., 1888), <https://archive.org/details/civillistconstit00wernuoft/page/n6>; Clarence F. Birdseye, *Supplement to the Second Edition of Birdseye’s Revised Statutes, Codes and General Laws of the State of New York* (New York: Baker, Voorhis & Company, 1897); and Robert Grattan, *Bender’s Village Laws of the State of New York* (Albany: Matthew Bender & Company, 1914), https://books.google.com/books?id=YMASAAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false. NC-AR 13243-81, Village Incorporation Files, New York State Archival holdings.
- 27 L. 1972 Ch 892.
- 28 1967 NY Local Law 1919-10, No. 3.
- 29 *Marcus v. Baron*. 84 A.D.2d 118 (N.Y. App. Div. 1981), <https://casetext.com/case/matter-of-marcus-v-baron-1>.
- 30 *Marcus v. Baron*, 57 N.Y.2d 862 (1982), <https://www.leagle.com/decision/198291957ny2d8622709>.
- 31 *Marcus v. Baron*. 84 A.D.2d 118, 445 N.Y.S.2d. 587 (2d Dep’t 1981).
- 32 1980 Op St Compt File #762; 1981 Op St Compt File #81-26.
- 33 Section 2-254 of Article II of the General Village Law was modified to include reference to the new Article 17-A of the General Municipal Law (or the Empowerment Act), by providing that “If the limits of a village incorporated prior to the first day of April, nineteen hundred sixty-five are coterminous with the limits of, or wholly include the territory of, a district, the board of trustees of the village, by local law or pursuant to the provisions of article seventeen-A of the general municipal law, may abolish any such district”.
- 34 Mississippi Code 1972 Annotated, Classification of municipalities — § 21-1-1, <https://casetext.com/statute/mississippi-code-1972/title-21-municipalities/chapter-1-classification-creation-abolition-and-expansion/general-provisions>.
- 35 Vermont Laws, Chapter I, § 6 and § 69, <https://legislature.vermont.gov/statutes/constitution-of-the-state-of-vermont/>.
- 36 Two judicial rulings provide some clarification for the reasonableness of the petition. In 1971, a court determined that where a 6 square mile area within the proposed incorporation was used for agricultural purposes and was not central or integral to the existence and function of the municipality, the judgement affirming the order to incorporate was reversed (In re Incorporation of Village of Lone Jack (A.), 471 S.W.2d 513, <https://casetext.com/case/in-re-inc-of-village-of-lone-jack>). In 1976, a court held that where a village existed as incorporated for 22 years, a challenge to the validity of the incorporated was time-barred by laches (State ex rel. King v. Village of Praethersville (A.), 542 S.W.2d 578, <https://casetext.com/case/state-ex-rel-king-v-vil-of-praet>).

- 37 To warrant board to incorporate territory into a village, there must be requisite population. Remote territory, or purely agricultural land not connected or not adapted to municipal purposes, may not be included (State ex rel. Pond v. Clark, 75 Neb. 620, 106 N.W. 971 (1906); State ex rel. Loy v. Mote, 48 Neb. 683, 67 N.W. 810 (1896)). Incorporation as a village is not permissible if the area of the proposed village has previously been incorporated under any Nebraska statute (State ex rel. Lanman v. Board of Cty. Commissioners, 277 Neb. 492, 763 N.W.2d 392 (2009)).
- 38 “When a county board has entered an order declaring any village within the county as incorporated, it shall be conclusively presumed that such incorporation and all proceedings in connection therewith are valid in all respects notwithstanding some defect or defects that may appear on the face of the record, or the absence of any record, unless an action shall be brought within one year from the date of entry of such order of the county board, attacking its validity” (Nebraska Revised Statute 17-201.01, <https://nebraskalegislature.gov/laws/statutes.php?statute=17-201.01>).
- 39 The statute specifies: “...the governor shall determine if the petition complies with the provisions of this Subpart, including the requirement that in excess of two hundred inhabitants reside in the area proposed for incorporation. If the governor finds that there has been compliance with the provisions of this Subpart, he shall call a special election to be held on the next possible date for special elections...” (Louisiana State Laws, Revised Statutes, Municipalities and Parishes, Governor’s determination; special election — § 33:3, <http://www.legis.la.gov/Legis/Law.aspx?d=90107>).
- 40 Michigan Compiled Laws, Michigan State Boundary Commission, Act 191, § 19, as amended in 1968, [http://www.legislature.mi.gov/\(S\(3oekx355wt04dy45szyjmx55\)\)/documents/mcl/pdf/mcl-act-191-of-1968.pdf](http://www.legislature.mi.gov/(S(3oekx355wt04dy45szyjmx55))/documents/mcl/pdf/mcl-act-191-of-1968.pdf).
- 41 Michigan Compiled Laws, State Boundary Commission, Act 191, § 123.1010 (2018), <https://law.justia.com/codes/michigan/2018/chapter-123/statute-act-191-of-1968/section-123.1010/>.
- 42 Michigan Compiled Laws, State Boundary Commission, Act 191, § 123.1010 n.5 (2018).
- 43 Michigan Compiled Laws, State Boundary Commission, Act 191, § 123.1010 n.6 (2018).
- 44 Per the law, the court shall determine whether the petition meets the formal and signature requirements and shall further find that the following minimum requirements are met:
1. Isolated village. Area, one-half square mile; resident population, 150.
 2. Isolated city. Area, one square mile; resident population, 1,000; density, at least 500 persons in any one square mile.
 3. Metropolitan village. Area, 2 square miles; resident population, 2,500; density, at least 500 persons in any one square mile.
 4. Metropolitan city. Area, 3 square miles; resident population, 5,000; density, at least 750 persons in any one square mile.
 5. Standards when near 1st, 2nd, or 3rd class city. If the proposed boundary of a metropolitan village or city is within 10 miles of the boundary of a 1st class city or five miles of a 2nd or 3rd class city, the minimum area requirements are four and six square miles for villages and cities, respectively.
- 45 Per the statute:
1. The court shall determine whether an annexation proceeding that affects any territory included in the incorporation petition has been initiated under s. 66.0217, 66.0219, or 66.0223. A court shall consider an annexation proceeding under s. 66.0223 to have been initiated upon the posting of a meeting notice by a city or village that states that the city or village is considering enacting an ordinance under s. 66.0223.
 2. If the court determines that an annexation proceeding described under subd. 1. was initiated before the publication of the notice under sub. (1), the court shall refer the petition to the board when the annexation proceeding is final. If the annexation is determined to be valid, the court shall exclude the annexed territory from the territory proposed to be incorporated when it refers the petition to the board.
 3. If the court determines that an annexation proceeding described under subd. 1. was initiated after, and within 30 days after, the publication of the notice under sub. (1), the annexation may not proceed until the validity of the incorporation has been determined. If the incorporation is

- determined to be valid and complete, the annexation is void. If the incorporation is determined to be invalid, the annexation may proceed.
4. If the court determines that an annexation proceeding described under subd. 1. was initiated on the same date as the publication of the notice under sub. (1), the court shall determine which procedure was begun first on that date and that action may proceed and the other action may not proceed unless the first action fails.
 5. If the court determines that an annexation proceeding described under subd. 1. was initiated more than 30 days after the publication of the notice under sub. (1), the annexation is void.
- 46 See Wisconsin Statutes & Annotations, § 66.0205 (2012 through Act 45), <https://law.justia.com/codes/wisconsin/2012/chapter-66/section-66.0205/>.
- 47 The requirement of homogeneity seeks to assure that an incorporated area is urban rather than rural, that development in such an area is not scattered, fragmented, or haphazard, and that similar land uses are grouped together in appropriate municipal boundaries (Pleasant Prairie v. Department of Local Affairs and Development, 113 Wis. 2d 327, 334 N.W.2d 893 (1983)).
- 48 Walag v. DOA, 2001 WI App 217, 247 Wis. 2d 850, 634 N.W.2d 906, 00-3513.
- 49 New York Consolidated Law, Article 17 GMU § 702 (2014), <https://www.nysenate.gov/legislation/laws/GMU/A17>, provides that:
It is the intention of the legislature by the enactment of this article to provide a municipal annexation law pursuant to the provisions of the bill of rights for local governments in subdivision (d) of section one of article nine of the constitution, which provisions specify basic prerequisites to the annexation of territory from one local government to another including (1) the consent of the people, if any, of a territory proposed to be annexed and (2) the consent of the governing board of each local government, the area of which is affected, upon the basis of its determination that the annexation is in the over-all public interest, and which provisions require the legislature to provide, where such consent of a governing board is not granted, *for adjudication and determination, on the law and the facts, in a proceeding initiated in the supreme court, of the issue of whether the annexation is in the over-all public interest.*
- 50 For example, an August 2019 internet ad by the Rockland County GOP, released in August of 2019, urging residents to vote in the upcoming county legislative races, was widely condemned by a multiplicity of Jewish organizations, as well as by the New York State Attorney General and Governor. Entitled “A Storm is Brewing in Rockland County,” the ad analogized the growing Hasidic population as a political “take-over” threatening the homes, families, schools, community, resources, and “our” very way of life.” More recently, the State Attorney General filed as intervenor in a suit brought by developers against the Town of Chester and Orange County alleging housing and religious discrimination in their exercise of municipal land-use authority.
- 51 Legislative Bill and Veto Jackets, Veto 186, Memorandum of Recommendation, Director of Intergovernmental Affairs and Legislative Counsel to Governor Andrew Cuomo, September 16, 2015.
- 52 Legislative Bill and Veto Jackets, Veto 186, Letter of Dov Hikland to Governor Andrew Cuomo, July 7, 2015.
- 53 New York State Assembly, Memorandum in Support of Legislation, A06776 Memo, https://nyassembly.gov/leg/?default_fld=&bn=A6776&term=&Memo=Y.
- 54 New York State Assembly, Memorandum in Support of Legislation, A08411 Memo, https://nyassembly.gov/leg/?bn=A08411&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y&leg_video=1.
- 55 A recent report by the nonprofit EdBuild, for example, finds that there have been some 2,000 instances of affluent, predominately white, areas seeking to create their own school district, or even cities, in an effort to separate themselves from the problems of the poorer more diverse communities. See, Adam Harris, “The New Secession,” *The Atlantic*, May 20, 2019; and “Fractured: The Breakdown of America’s School Districts,” EdBuild.org, <https://edbuild.org/content/fractured#intro> (accessed October 15, 2019).



ABOUT THE ROCKEFELLER INSTITUTE

Created in 1981, the Rockefeller Institute of Government is a public policy think tank that conducts cutting-edge, nonpartisan research and policy analysis. Our mission is to improve the capacities of communities, state and local governments, and the federal system to work toward genuine solutions to the nation's problems. Through rigorous, objective, and accessible analysis and outreach, the Institute gives citizens and governments facts and tools relevant to public decisions.

Learn more at www.rockinst.org.

LEARN MORE

www.rockinst.org

@rockefellerinst

Rockefeller
Institute of Government