

# Reversion from city to town status

Mark K. Flynn  
Woodley & Flynn, PLLC  
Ironfronts Building, Suite 400  
1011 East Main  
Richmond, Virginia 23219  
[markkflynn@gmail.com](mailto:markkflynn@gmail.com)  
804-400-1321

The statutes set out below show the steps required for a city to transition, or revert, to town status.

## Procedure

1. City decides which county or counties to become a part of, based on economic, demographic, geographic considerations.

Note: I recommend against a reversion effort that would split the new town into more than one county. Doing that would dilute the influence of the new town and its residents in the political and governmental life of the counties involved.

Note: Dinwiddie County has 5,000 fewer citizens than does Petersburg. If Petersburg were to become a town in Dinwiddie, the town would have more than half the total population and voting power of the entire county. For this reason, the court would likely be very restrictive on a reversion that involves Dinwiddie.

2. City prepares for proceeding before the Commission on Local Government.
  - A. City employs financial advisors, economists, land use experts, other experts and one or more attorneys experienced in handling change of status cases in Virginia.
  - B. City, using its experts, develops a case to present to the Commission.
  - C. City files petition with Commission, defendant county answers and prepares its arguments. Commission holds hearings, makes report on findings and its recommendations for the terms of the reversion.

Commission proceeding may take two years to complete.

3. City prepares for proceeding before a special circuit court. (The special court consists of three circuit court judges appointed by the Supreme Court of Virginia.)

- A. City reviews and responds to the Commission's recommendations.
- B. City uses same, and possibly additional, experts to update the plan for reversion. The City essentially is required to pay to have the work done twice, because enough time will have passed between 2.A and 3.A to make the earlier information dated.
- C. City passes ordinance to authorize the filing of the petition, and the proceedings begin.
- D. Court holds hearings on the reversion, makes findings of conditions and orders the reversion with a set of conditions that the new town will be required to meet.

The conditions are extensive – see the required parts of the court's order, set out in §15.2-4106, copied below.

The circuit court proceeding may take eighteen months to conclude.

The entire process, not counting an appeal to the Supreme Court, could easily take three years.

The entire process is expected to cost the city a minimum of \$1.5 million to prosecute. Costs could reach \$2 million.

4. If City objects to the court's decisions or conditions, it may appeal the matter to the Virginia Supreme Court.

**Likely conditions:**

City will retain all debt and will need to take steps to pay the debts.

City schools become county schools, city school board is ended.

The Petersburg constitutional officers would cease to serve. The county's constitutional officers would assume all duties. Very likely that court operations would move out of the town to the county courthouse.

The town would be responsible for street maintenance.

The town would operate a police department, as well as garbage collection and would be responsible for providing water and sewer services to its citizens. (Certain utility services could be conveyed to the county in the proceedings, by agreement of the city and county.)

Taxes: The town of Petersburg would impose a real estate tax on the citizens of the town to pay the services it would keep and to fund the debt it is required to pay. Town residents will also be responsible for county real estate taxes. The economists and financial advisors would probably identify the town tax rate needed to pay the things for which the town would be responsible.

## State Code sections governing transition to town status

### § 15.2-2907. Actions for annexation, immunity, establishment of city, etc.; investigations and reports by Commission; negotiation.

A. No locality or person shall file any action in any court in Virginia to annex territory, to have an area declared immune from annexation based upon provision of urban-type services, to establish an independent city, to consolidate two or more localities, at least one of which is a county, into a city, to make a transition from a county to a city or to make a transition from city status to town status, without first notifying the Commission and all local governments located within or contiguous to, or sharing functions, revenue, or tax sources with, the locality proposing such action. Upon receipt of the notice the Commission shall hold hearings, make investigations, analyze local needs and make findings of facts and recommendations, which may, in cases where immunity or annexation is sought, recommend a grant of immunity or annexation of a greater or smaller area than that proposed by the locality pursuant to the procedures of this chapter. Such findings shall be rendered within six months after the Commission receives notice from the locality intending to file court action, provided that the Commission on its own motion may extend the period for filing its report by no more than sixty days. No further extension thereafter of the time for filing shall be made by the Commission without the agreement of the parties. No court action may be filed until the Commission has made its findings of facts. Unless the parties agree otherwise, no court action may be filed more than 180 days after the Commission renders its final report as provided for in this section. While the matter is before the Commission, the Commission may actively seek to negotiate a settlement of the proposed action between the affected localities. The Commission may direct that the conduct of the negotiations be in executive session. In addition, the Commission may, with the agreement of the parties, appoint an independent mediator, who shall be compensated as agreed to by the parties. Offers and statements made in negotiations shall not be reported in the finding of facts or introduced in evidence in any subsequent court proceedings between the parties.

B. The Commission shall report, in writing, its findings and recommendations to the affected localities, any other localities likely to be affected by such proposed action, and to any court which may subsequently consider the action. The report shall be based upon the criteria and standards established by law for any such proposed action. The report, or any copy thereof, bearing the signature of the chairman of the Commission shall be admissible in evidence in any subsequent proceeding relating to the subject matter thereof. The court in any such proceeding shall consider the report but shall not be bound by the report's findings or recommendations.

Before making the report the Commission shall conduct hearings at which any interested person may testify. Prior to the hearing, the Commission shall publish a notice of the hearing once a week for two successive weeks in a newspaper of general circulation in the affected counties and cities. The second advertisement shall appear not less than six days nor more than twenty-one days prior to the hearing.

C. A court on motion of any party or of the Commission may for cause shown extend the time for filing of the Commission's report but no such extension of time shall exceed ninety days unless the parties agree otherwise.

D. Except for any hearing or meeting specifically required by law, Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 shall not be applicable to the Commission nor meetings convened by members of the Commission, its employees, or by its designated mediators with local governing bodies or members thereof, nor shall such chapter be applicable to meetings of local governing bodies, or members thereof, held for purpose of negotiating any issues which are or would be subject to the Commission's review. Offers and statements made in any negotiation or mediation activity conducted under the direction of the Commission shall not be recorded in any report issued by the Commission, nor shall they be introduced in evidence in any subsequent court proceeding by the Commission or any other party.

E. Notwithstanding any other provision of law, any locality, either prior or subsequent to the filing of any annexation or partial immunity suit in any court of this Commonwealth in which it is one of the parties, may notify the Commission on Local Government that it desires to attempt to negotiate an agreement with one or more adjacent localities relative to annexation or partial immunity under the direction of the Commission. A copy of the notice shall be served on all adjacent localities. The affected localities shall then attempt to resolve their differences relative to annexation or partial immunity, and shall keep the Commission advised of the progress being made. The Commission, or its designee, may serve as a mediator and the Commission's staff and resources shall be available to the negotiating localities. All expenses of the negotiations, including expenses of the Commission or its staff incurred in the negotiations, shall be borne by the parties initiating the notice unless otherwise agreed by the parties. All suits for either annexation or partial immunity by or against any locality involved in such negotiations shall be stayed while the negotiations are in progress. If, after a hearing, the Commission finds that none of the parties is willing to continue to negotiate, or if it finds that three months have elapsed with no substantial progress toward settlement, it shall declare the negotiations to be terminated. Unless the parties agree otherwise, negotiations shall in any event terminate twelve months from the date the initial notice was given to the Commission. Immediately upon such finding and declaration by the Commission, or upon the expiration of twelve months from the initial notice or any agreed extension thereof, whichever first occurs, any stay of a pending suit for annexation or partial immunity entered under this section shall automatically terminate and no new notice to negotiate shall thereafter be filed by any party.

F. A locality may proceed simultaneously under subsections A and E of this section.

## **Chapter 41. Transition of City to Town Status**

§ 15.2-4100. City may change to town status.

A city may change to town status in accordance with the provisions of this chapter.

§ 15.2-4101. Ordinance petitioning court for town status; notice of motion.

A. Any city in this Commonwealth with a population at the time of the latest United States decennial census of less than 50,000 people, after fulfilling the requirements of Chapter 29 (§ 15.2-2900 et seq.), may by ordinance passed by a recorded majority vote of all the members thereof, petition the circuit court for the city, alleging that the city meets the criteria set out in § 15.2-4106 for an order granting town status to the city. The circuit court with which the petition is filed shall notify the Supreme Court, which shall appoint a special court to hear the case as prescribed by Chapter 30 (§ 15.2-3000 et seq.) of this title.

B. Before instituting a proceeding under this chapter for a grant of town status, a city shall serve notice on the county attorney, or if there is none, on the attorney for the Commonwealth, and on the chairman of the board of supervisors of the adjoining county that it will, on a given day, petition the circuit court for a grant of town status. The notice served on each official shall include a certified copy of the ordinance. A copy of the notice and ordinance, or a descriptive summary of the notice and ordinance and a reference to the place within the city or adjoining county where copies of the notice and ordinance may be examined, shall be published at least once a week for four successive weeks in some newspaper having general circulation in the city and adjoining county. The notice and ordinance shall be returned after service to the clerk of the circuit court. Certification by the owner, editor or manager of the newspaper publishing the notice and ordinance shall be proof of publication.

§ 15.2-4103. Parties.

In any proceedings instituted under the provisions of this chapter, the adjoining county shall be made party to the case. Any qualified voter or property owner of the city or adjoining county may by petition become party to the proceedings.

§ 15.2-4104. Time limit for intervenors; publication of order.

The special court shall by order fix a time within which a qualified voter, property owner, political subdivision, or other interested party not served may become a party to proceedings instituted under this chapter, and thereafter no such petition shall be received except for good cause shown. A copy of the order shall be published at least once a week for two successive weeks in a newspaper of general circulation in the city and county.

§ 15.2-4105. Pretrial conference; matters considered.

The special court shall, prior to hearing any case under this chapter, direct the attorneys for the parties to appear before it or, in its discretion, before a single judge, for a conference to consider:

1. Simplification of the issues;
2. Amendment of pleadings and filing of additional pleadings;
3. Stipulations as to facts, documents, records, photographs, plans and like matters, which will dispense with formal proof thereof, including:
  - a. Assessed values and the ratio of assessed values to true values, as determined by the State Department of Taxation, in the city seeking to become a town and in the county including real property, personal property, machinery and tools, merchants' capital and public service corporation assessment for each year of the five years immediately preceding;

- b. School population and school enrollment in the city seeking to become a town and in the county, as shown by the records in the office of the division superintendent of schools; and cost of education per pupil in average daily membership, as shown by the last preceding report of the Superintendent of Public Instruction;
- c. Population and population density of the city seeking to become a town and of the county;
- 4. Long-term and short-term indebtedness of both the city and the county;
- 5. Limitation or expansion of pretrial discovery procedures;
- 6. Limitation of the number of expert witnesses; each expert witness who will testify shall file a statement of his qualifications;
- 7. Such other matters as may aid in the disposition of the case.

The court, or the judge, as the case may be, shall make an appropriate order which will control the subsequent conduct of the case unless modified for good cause before or during the trial or hearing.

§ 15.2-4106. Hearing and decision by court.

A. The special court shall enter an order granting town status if, after hearing the evidence, the court finds that:

- 1. The city has a current population of less than 50,000 people;
- 2. The adjoining county or counties have been made party defendants to the proceedings;
- 3. The proposed change from city to town status will not substantially impair the ability of the adjoining county in which the town will be located to meet the service needs of its population;
- 4. The proposed change from city to town status will not result in a substantially inequitable sharing of the resources and liabilities of the town and the county;
- 5. The proposed change from city to town status is, in the balance of equities, in the best interests of the city, the county, the Commonwealth, and the people of the county and the city; and
- 6. The proposed change from city status to town status is in the best interests of the Commonwealth in promoting strong and viable units of government.

B. The court shall have authority to impose such terms and conditions as it deems appropriate to:

- 1. Ensure an orderly transition from city status to town status;
- 2. Adjust financial inequities;
- 3. Balance the equities between the parties; and
- 4. Ensure protection of the best interests of the city, the county, the Commonwealth, and the people of the county and the city.

C. The court shall render a written opinion in every case brought under the provisions of this chapter.

D. In the event the court enters an order declaring the city eligible for town status, a copy of the order shall be certified to the Secretary of the Commonwealth.

§ 15.2-4107. Assistance of state agencies.

The special court may, in its discretion, direct any appropriate state agency, in addition to the Commission on Local Government, to gather and present evidence, including statistical data and exhibits, for the court, to be subject to the usual rules of evidence. The court may determine the actual expense of preparing such evidence and may tax such expense as costs in the case; the costs, if so taxed, shall be paid by the clerk into the general fund of the state treasury, and credited to the agency furnishing the evidence.

§ 15.2-4108. Appeals.

Appeals may be granted by the Supreme Court of Virginia as provided in §§ 15.2-3221 and 15.2-3222, which shall apply *mutatis mutandis*.

§ 15.2-4109. Declining a grant of town status.

In any proceedings brought under the provisions of this chapter, the governing body of the city, may, by ordinance or resolution, decline to accept eligibility for town status on the terms and conditions imposed by the special court at any time prior to twenty-one days after entry of an order granting eligibility for town status, or within twenty-one days after denial of a petition for appeal or within twenty-one days after the entry of the mandate in an appeal which has been granted.

§ 15.2-4110. Proceedings final for five years.

In the event the special court determines the city to be ineligible for town status or in the event that town status is declined under the provisions of § 15.2-4109, no subsequent proceedings shall be brought under the provisions of this chapter within five years of the date of the final order.

§ 15.2-4111. Effective date of transition.

The special court in its order granting town status shall specify the effective date of transition from city status to town status, but in no event shall such date be sooner than six months from the date of the court order.

§ 15.2-4112. Charter for resulting town.

A. If a proposed charter for the resulting town has been approved by the General Assembly for adoption pending order of the special court pursuant to this chapter, such proposed charter shall be the charter of the town upon approval of the transition from city to town status.

B. If no such proposed charter for the resulting town has been approved by the General Assembly, the court shall enter an order conforming the city charter to a town charter, which shall be the charter of the town until a new charter is granted by the General Assembly.

§ 15.2-4113. Restriction on subsequent change in status.

Notwithstanding any contrary provision of law, general or special, a town created under this chapter shall not return to its previous independent city status.

§ 15.2-4114. Liabilities and assets of such city.

Unless otherwise provided by agreement of the governing bodies of the city and county, or by order of the special court pursuant to § 15.2-4106, a town created under this chapter shall remain liable for all of the bonded indebtedness, current debts, obligations, and liabilities if incurred as a city. Unless otherwise provided by agreement of the governing bodies of the city and county, or by order of the court pursuant to § 15.2-4106, the title to all of the real and personal property of the former city and all of its rights and privileges under any contract, and all of its books, records, papers and other things of value, shall vest in and become the property of the town.

§ 15.2-4115. Effect when city becomes town; officers.

When a city becomes a town under the provisions of this chapter, its ordinances shall become the ordinances of the town, insofar as they are applicable, and consistent with law, until they are repealed, and the existence of such city as an independent city of the Commonwealth shall terminate, as shall the terms of office and the rights, powers, duties and compensation of its constitutional officers and their deputies and employees. All officers, agents and employees of the city, including the mayor and the members of city council, shall continue to serve as the officers, agents and employees of the town, until their positions or offices are terminated as provided by law, or in the case of the mayor and members of council, until their successors are elected or appointed. The circuit court shall order an election to be held pursuant to § 24.2-682 not less than thirty nor more than 180 days after the date of the special court order granting town status, but at least thirty days before the effective date of the transition from city to town status, at which election the town council and other elected officers of the town shall be selected. The terms of such officers shall commence on the day the transition from city to town status becomes effective and shall continue, unless otherwise removed, until their successors have been elected and assume office. The successors or all such officers whose first election is herein provided for shall thereafter be elected at the time, in the manner and for the terms provided by general law.