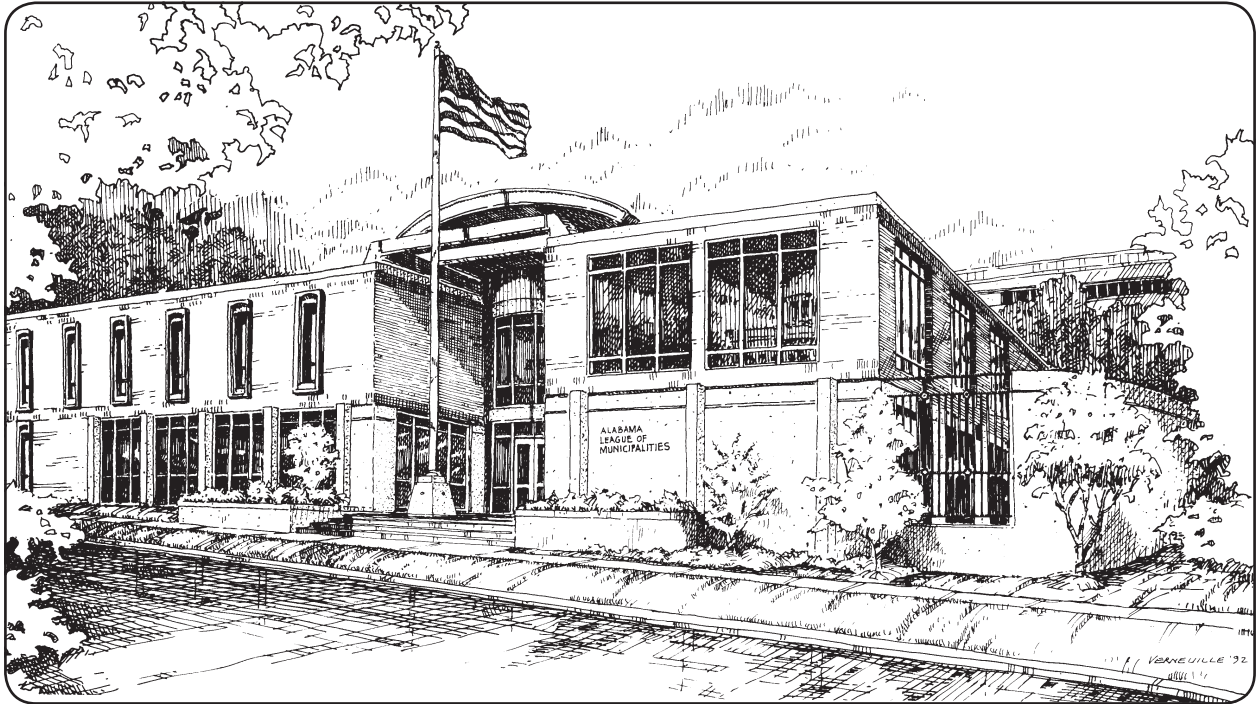


Incorporating a Community



Prepared by The Alabama League of Municipalities

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Alabama League of Municipalities, 535 Adams Avenue, Montgomery, AL 36104
334-262-2566 • www.alalm.org



For more information, contact the Alabama League of Municipalities, P.O. Box 1270,
Montgomery, AL 36102; phone 334-262-2566.

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Caution: *The forms in this publication are intended to be used as samples for drafting the papers needed to comply with the incorporation procedures set forth in Title 11 of the Code of Alabama. These forms are merely guides and are subject to changes by amendments to the state law on incorporations.*

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Incorporating a Community – An Outline

This is an outline of the pertinent statutory provisions regarding the procedure to incorporate a municipality and includes the following:

Creation of Municipal Corporation
Election of Officers
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Sample Petition to Probate Judge
Probate Judge’s Order of Election
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Report of Census Enumerators
Order of Incorporation
Order of Election
Other Incorporation Records

Creation of Municipal Corporation

- See Section 11-41-1 through Section 11-41-6, Code of Alabama, 1975, as amended.

- Community must have a population of not less than 300. Note: Intent to reside in a village does not satisfy the population requirement for petitioning to incorporate a village. *In re Inc. of Caritas Vill. v. Fuhrmeister*, 152 So.3d 1238 (Ala., 2014). If the community lies within or partly within a county with a population of 600,000 or more, the territory must have a population of not less than 1,000 and no part of the territory or its perimeter may lie within 3 miles of the corporate limits of any existing city or town unless the territory proposed to be incorporated has a population of at least 10,000 and lies within 3 miles of a Class 1 municipality. Further, in counties with populations of 600,000 or more, territory with a population of 3,000 or more may incorporate within 3 miles of a Class 4 or 5 municipality, and territory with a population of 1,500 or more may incorporate within 3 miles of a Class 6, 7, or 8 municipality.

- Residences must be contiguous.

- Residences must form a homogenous community.

- Application must be made to the probate judge of the county in which the community is situated.

- If the community is situated in two counties, application must be made to the probate judge of the county in which the greater part is situated.

- Application must be made by petition in writing, which must:
 - Be signed by not less than 15 percent of the qualified electors residing within the limits of the proposed municipality. Note: Because the statute is silent on the time a petition for the incorporation of a community must be filed or re-filed after the signatures have been obtained, a probate judge, in determining the validity of

the petition, decides on a case-by-case basis regarding the passage of time between the execution of the petition and the submission of the petition to the probate court for the requested election. A probate judge, in his judicial capacity, may conduct a hearing to determine the validity of a petition for the incorporation of a municipality. AGO 2002-278.

- State the name of the proposed municipality.
- Have attached thereto an accurate plat of territory proposed to be incorporated. Plat must include all subdivisions, streets, etc., within such territory.
- Include an accurate description, by metes and bounds, of the boundary of the territory to be incorporated.
- No territory may be included unless there are at least 4 qualified electors residing on each quarter of each quarter section (40 acres) who agree to incorporation by signing the petition.
- Persons, firms or corporations owning at least 60 percent of the acreage to be incorporated must consent by signing the petition. Note: The 60-percent-ownership requirement is in relation to the entire area to be incorporated. This figure should not be applied to each quarter of a quarter section of land in a proposed municipality. AGO 2011-099.
- Proof of residence and qualification as electors of petitioners shall be made to probate judge.* Such proof shall be made by affidavit or as the judge directs.
- The probate judge shall have a reasonable period of time, not to exceed 45 days, within which to ascertain compliance with Section 11-41-1.
- The persons, firm or corporation assessing the lands within the proposed incorporation shall be accepted by the probate judge as being the owner thereof.
- After the foregoing conditions have been complied with, the probate judge must order an election to be held within 90 days after the filing of the petition.
- Election must be held within the limits of the proposed municipality.
- Place of election must be designated by probate judge.
- Notice of election must be given by probate judge.
 - Notice shall be by publication for 3 consecutive weeks in one or more newspapers of general circulation (if any) published in the county; and
 - Notice shall be posted in 3 public places, within the limits of the proposed municipality.
- Notice must state:
 - Time and place of election; and
 - That a plat of the limits of the proposed municipality is on file at the office of the probate judge.
- The probate judge shall appoint 3 qualified electors within the limits of the proposed municipality as inspectors to manage the election.
- Election must be carried out in accordance with general election laws, except that a voter may furnish his or her own ballot, upon which must be written “corporation” or “no corporation.”
- Any qualified elector who has resided within the boundaries of the proposed municipality for the past 3 months may vote.
- Inspectors must certify the result of the election to the probate judge within 5 days after the election.

- If a majority of the votes cast are for “corporation,” the probate judge must:
 - Cause a census to be taken of inhabitants residing within the territory to be incorporated.
 - Within 3 days after completed census has been returned to the probate judge, he or she shall make an order to be entered in court records that the inhabitants are incorporated as a town or city, as the case may be, by the name and with the boundaries shown by the petition.
 - The probate judge must file within 10 days after its issuance a certified copy of the order of incorporation. The copy shall be filed in the regular corporation books maintained by the judge in the probate office and also in the office of the Secretary of State. There shall be paid to the probate judge a fee of five dollars (\$5), in advance, for filing each such order.
 - The town or city then has all the rights and powers granted by law to such corporation.

After August 1, 2004, any municipality incorporated under the procedures set out in this section shall assume responsibility to control, manage, supervise, regulate, repair, maintain, and improve all public streets or parts thereof lying within the incorporated limits no later than 24 months after the incorporation is finalized.

Election of Officers

- Upon making the order of incorporation, the probate judge shall order an election to be held for the election of mayor and members of the council.
- The same inspectors (or others appointed by the probate judge) shall manage this election.
- Such officers shall be elected from the town or city at large. See Sections 11-43-2 through 11-43-40, Code of Alabama, 1975.
- Inspectors shall be given 30-days notice of the time and place of holding the election by posting the notice in 5 public places within the limits of the town or city.
- No person may vote who is not a qualified elector who has resided within the municipality for 3 months preceding the election.
- Inspectors shall report the result of the election to the probate judge within 5 days after the election.
- Probate judge may enter an order confirming and approving the election. Upon recording such order, the elected officers shall be entitled to hold office until the next general municipal election.
- Probate judge may, for fraud or material irregularities, set the election aside and order another.
- If an elected officer fails to qualify within 30 days after his or her election, the probate judge may appoint some person to fill such vacancy.
- The judge shall make a record of incorporation and election proceedings and file with the Secretary of State a certified copy of the entry showing the results of the election.
- The cost of all proceedings shall be paid by the town or city. If the town or city is not established, the costs shall be paid by the petitioners.
- General elections to be held on the fourth Tuesday in August 1984 and quadrennially thereafter.
- Mayor and councilmembers must be qualified electors and must reside within the limits of the municipality during their terms of office.
- The council shall elect a clerk and fix his or her salary and term of office.

- The council shall fix the mayor's salary at least 6 months prior to each general municipal election. See Section 11-43-80, Code of Alabama, 1975.
- If the population is less than 12,000:
 - The governing body shall consist of a mayor and 5-7 councilmembers.
 - The mayor is a member of the council.
 - The mayor shall preside over the meetings.
 - The mayor may vote on any question at his or her discretion.
 - The mayor must vote in case of a tie, but the mayor cannot vote more than once on any question before the council
- If the population is over 12,000:
 - The mayor is NOT a member of the council.
 - The mayor may NOT vote on any question before the council.
 - The mayor may veto ordinances and resolutions of a general and permanent nature.

Advantages of Incorporation

A full coverage of the advantages and disadvantages of incorporation would be quite lengthy, and it would necessarily vary depending upon the area to be incorporated. Briefly, the advantages of incorporation lie in the services which may be rendered to the people of the area through the municipal corporation. The following list is a general description of the advantages which may result from incorporation.

- Government of the local area by locally-elected people. The municipal governing body exercises powers delegated by statute from the state legislature. Most of these powers are found in Title 11 of the Code of Alabama, 1975.
- Protection services for the people and property of the community.
- Fire protection not only protects property but results in lower insurance rates for property owners.
- Police protection ensures the safety of citizens and provides for the orderly growth of the community.
- Municipal ordinances and criminal statutes can be enforced through the municipal court.
- Sanitation regulations are enforced in cooperation with the state and county health departments.
- Public works programs are possible through the municipal corporation.
- Street construction and maintenance.
- Sidewalk construction and maintenance.
- Public buildings.
- Parks and recreation facilities.
- Airports, museums, zoos, hospitals, curb markets, etc.
- Sewer systems, both sanitary and storm.
- Street lighting.
- Flood control projects.
- Utilities. Construction, maintenance and operation of water, gas, sewer and electric systems are possible. Formation of separately incorporated boards for the operation and financing of such systems is possible, if desired.

- Industrial development. Through the municipal corporation, industry may be attracted by the use of the Wallace Act and the Cater Act which authorize the financing of industrial development projects.
- Community financing.
- The betterment of the community is brought about by revenues derived from license taxes, ad valorem taxes, utility revenues, service charges, state-shared funds, inspection fees and miscellaneous sources.
- The community has the authority to borrow funds for public projects through the municipal corporation. Such borrowing may be of the general obligation type or it may be secured by the revenues to be derived from a particular project.
- Public projects may be financed through the assessment of properties benefited by the resulting improvements.
- Grant-in-aid programs. Municipalities are able to cooperate with the state and federal governments by way of grants-in-aid for local improvements. Low-cost financing for local public works is available through the federal government.
- Promotion of orderly growth.
- Through the power of the municipality to plan and zone the area, the future development of the community is protected.
- The police jurisdiction of a municipality extends 1-1/2 miles beyond the corporate limits of municipalities with a population of less than 6,000 and for 3 miles beyond the corporate limits of larger cities.
- Garbage collection and disposal services.
- Adoption and enforcement of ordinances for the protection of the health, welfare, morals and convenience of the citizens of the area.
- Miscellaneous.

Economic Feasibility

In determining whether to incorporate, the people of a community must consider the economic feasibility of the step. A municipality must have revenue to operate and provide the services desired by citizens. If the area is sparsely settled, the cost of services is much greater than for compact areas.

License taxes produce well over one-half of the revenue derived by most cities and towns in Alabama. If the area has a number of businesses, the chances of financing are much better than if business activity is negligible.

While a municipality may receive ad valorem taxes, it cannot depend upon this tax to provide enough revenue to finance the entire municipal operation.

Sample Forms for Municipal Incorporation

The following forms are models which should be used only as a guide for the attorney handling the incorporation of a new municipality. These forms should be altered to fit each local situation and any amendment to the incorporation statutes. The sources of these samples are both incorporation records and probate judge's minute records.

Any community desiring to incorporate must follow the procedures found in Sections 11-41-1 through 11-41-6, Code of Alabama, 1975, exactly as they are stated in the Code. Any slight deviation from the prescribed procedure could result in the voiding of an incorporation election by a court of law.

It cannot be stressed enough that any group desiring to incorporate a new municipality in the state should retain an attorney to handle the matter. The local probate judge only checks to see that the correct information has been provided. The judge does not always check to ensure that the statutory procedures have been complied with. Furthermore, incorporation statutes are subject to legislative amendments. These changes in the law must be complied with in order to create a new municipality.

Any forms mentioned and included in this publication are intended solely as examples and not as a substitute for obtaining individualized legal advice. Use of these forms is at the sole risk of the user. The Alabama League of Municipalities and its staff disclaim any responsibility or liability which may arise or result from the use of these forms or any portion thereof.

Petition to Probate Judge

State of Alabama)
County of _____)

To the Hon. _____, Judge of Probate of _____ County, Alabama:

Under and by virtue of Code of Alabama 1975, Section 11-41-1, we, the undersigned, inhabitants, property owners and qualified electors residing in _____, an unincorporated community, lying and being in the County of _____, State of Alabama, do hereby most respectfully petition your Honor for an order of incorporation of said incorporated community and would show unto your Honor the following facts:

I. Petitioners aver that said _____ community has a population of not less than 300 inhabitants, constituting a body of citizens whose residences are contiguous to and all of which are formed into a homogeneous settlement or community; and that the proposed name of said municipality shall be _____. An accurate description of the metes and bounds of the boundary of such territory and an accurate map or plat of the territory to be embraced with the corporate limits are attached hereto and marked Exhibits "A" and "B" respectively, with leave to refer thereto for all proper purposes.

II. That the undersigned petitioners reside within the limits of the proposed municipality which boundary is shown by Exhibit "A" and that of the undersigned, there are at least 4 qualified electors residing on each quarter of each quarter section, according to government survey or part thereof of such platted land, and that the undersigned own at least 60% of the acreage shown in Exhibit "A."

The premises considered, petitioners pray that your Honor take jurisdiction of this matter and order incorporation of said _____ community as provided by law.

Respectfully submitted,

Qualified electors of _____
County residing within the boundary of _____.

Inhabitants and property owners residing within the boundary of _____.

Probate Judge's Order of Election

State of Alabama)
County of _____)

In Probate Court

(Date)

IN THE MATTER OF THE INCORPORATION OF THE _____ [City/Town] of _____:

This day came _____ and others and the Court proceeded to hear their petition in writing to be incorporated into a municipal corporation under the name of _____ which petition was filed in this Court on the ___ day of _____, 20___. Said petition is as follows:

[Set Out Petition in Full]

And it appearing to the satisfaction of the Court that the territory which is proposed to be incorporated is within said County and State and that within said territory there are more than 300 residents, and that the signers of the petition are 15% or more of the qualified electors of said county and residing within the limits of said proposed municipality, and that the residences within said territory are contiguous and form a homogeneous community, and that there are at least 4 qualified electors residing on each quarter of each quarter section of said territory who consent to said petition, and that all persons, firms or corporations owning at least 60% of the acreage to be incorporated consent to the petition.

It is therefore ordered by the Court that an election be held on the ___ day of _____, 20__ at _____ [place], a place within said proposed boundaries.

And it further appearing to the Court that _____, _____, and _____ are three qualified electors residing within said territory proposed to be incorporated, and are in every way qualified to manage an election, it is further ordered by the Court that they be, and they hereby are, appointed inspectors to manage the said election and that said election be conducted under the sanction and penalties as is provided under the general election laws.

Done in office this ___ day of _____, 20__.

Judge of Probate

EXHIBIT "A"

Description of _____ by metes and bounds:

EXHIBIT "B"

Plat of _____ area to be incorporated, if any:

Notice of Election

State of Alabama)
_____ County)

Notice is hereby given that a petition and plat have been filed in the office of the Probate Judge of said county, signed by at least 15% of the qualified electors of the county and residents of the community therein specifically bounded, stating that it is desired to incorporate said community, known as _____, and that I have appointed the ___ day of _____, 20__, as a day for holding an election to determine whether or not said community desires to become incorporated, and having designated _____ [place] in said community, as the polling place, and having named _____, _____, and _____ as inspectors to hold said election.

Given under my hand this the ___ day of _____, 20__.

Judge of Probate To: _____, Publisher

Please publish the above notice for three consecutive weeks in _____, a newspaper of general circulation published in _____ County, Alabama.

Judge of Probate

State of Alabama)
County of _____)

TO ANY SHERIFF OF SAID COUNTY, GREETINGS:

You are hereby commanded to notify _____, _____, and _____ that I have this day appointed them inspectors to hold an election at _____ [place] in _____ community on the ___ day of _____, 20 __, for the purpose of determining whether or not the community as designated in the petition and plat, which are on file in this office, desires to become a body corporate under the laws of Alabama under the name of _____.

Witness my hand this the ___ day of _____, 20 __.

Judge of Probate

Executed this ___ day of _____, 20 __, by leaving a copy of the within notice with _____, _____, and _____.

Sheriff

Certification of Election by Inspectors

State of Alabama)
_____ County)

We, _____, _____, and _____, do hereby certify that at an election held at _____ [place] on the ___ day of _____, 20 __, as directed by an order of the Court of Probate of said County and which election was held in all respects as provided by law, there were polled _____ legal votes, of which number _____ voted for “corporation,” and _____ voted “no corporation.”

Given under my hand this the ___ day of _____, 20 __.

Sworn to and subscribed before me this ___ day of _____, 20 __.

Notary Public

Probate Judge's Order for Census

State of Alabama)
County of _____)

In Probate Court

(Date)

IN THE MATTER OF THE INCORPORATION OF _____ :

And now come _____, _____, and _____, inspectors heretofore appointed by this Court in this case, and file in Court their return of an election held by them on the ___ day of _____, 20__ at _____[place] in _____ community, in this county. Said return is sworn to and is as follows:

State of Alabama)
County of _____)

We, _____, _____, and _____, do hereby certify that an election held at _____[place] on the ___ day of _____, 20__, as directed by an order of the Court of Probate of said county, and which election was held in all respects as provided by law, there were polled _____ legal votes, of which number _____ voted "corporation," and _____ voted "no corporation."

Given under my hand this, the ___ day of _____, 20__.

Sworn to and subscribed before me this ___ day of _____, 20__.

Notary Public

And it appearing to the Court that _____ voted "corporation" and _____ voted "no corporation," and that a majority of said votes were in favor of incorporating said community into a municipality:

It is therefore adjudged by the Court that the majority in favor of incorporation of said community is _____. And it appearing to the Court that _____, _____, and _____ are competent and proper persons to make an enumeration of the inhabitants of said territory, it is ordered that they be, and they hereby are, appointed to enumerate the inhabitants residing within the boundaries of the territory incorporated and make return to this Court as speedily as possible of their enumeration.

Done in office this, the ___ day of _____, 20__.

Judge of Probate

State of Alabama)
_____ County)

In Probate Court

(Date)

TO ANY SHERIFF OF SAID STATE, GREETINGS:

You are hereby commanded to notify _____, _____, and _____ that I have this day appointed them enumerators to enumerate the inhabitants residing within the boundaries of the territory to be incorporated as _____ and make return to this Court as speedily as possible of their enumeration.

Witness my hand this, the ___ day of _____, 20__.

Judge of Probate

Executed by serving a copy of the within on _____, _____, and _____ on the ___ day of _____, 20__.

Sheriff

Report of Census Enumerators

State of Alabama)
_____ County)

In Probate Court

(Date)

To the Hon. _____, Judge of said Court:

We, the undersigned, heretofore appointed by your Honor to enumerate the inhabitants of the territory sought to be incorporated under the name of _____, report to your Honor that we have carefully enumerated all of the said inhabitants and find that the number is _____.

Given under our hands this, the ___ day of _____, 20__.

Sworn to and subscribed before me this ___ day of _____, 20__.

Notary Public

Order of Incorporation

State of Alabama)
_____ County)

IN THE MATTER OF THE INCORPORATION OF THE TOWN OF _____, ALABAMA:

_____ [Date] come _____, _____, and _____ and file in this Court their enumeration of the citizens of the territory sought to be incorporated as _____, said return is as follows:

To Hon. _____, Probate Judge of _____ County:

We, the undersigned, heretofore appointed by your Honor to enumerate the inhabitants of the territory sought to be incorporated under the name of _____, report to your Honor that we have carefully enumerated all of said inhabitants and find that the number is _____.

Given under our hands this ___ day of _____, 20__.

Sworn to and subscribed before me this ___ day of _____, 20__.

Notary Public

And it appearing to the Court that said enumeration has been completed and that the provisions of the law for the incorporation of municipalities have been in all respects complied with:

It is therefore ordered, adjudged and decreed that the residents of said territory be, and they hereby are, declared incorporated under the laws of the State of Alabama under the name of _____ and within the boundaries set forth in the petition in this case and with all the rights and powers granted by the laws of Alabama to such corporation.

Done in office the ___ day of _____, 20__.

Judge of Probate

Order of Election

State of Alabama)
_____ County)

In Probate Court

(Date)

IN THE MATTER OF THE INCORPORATION OF THE TOWN OF _____:

It appearing to the Court that the Town of _____ was duly incorporated on the ___ day of _____, 20__, by order of this Court:

It is therefore ordered that an election to be held on the ___ day of _____, 20__, at _____ [place] in the Town of _____ by _____, _____, and _____, who are hereby appointed inspectors of said election, for the purpose of electing a Mayor and members of the Council authorized by the Code of Alabama, 1975, Section 11-43-2, who shall, at such election, be selected from the town at-large. Said inspectors shall give thirty days' notice of the time and place of holding the election by posting a notice of the time and place of holding the election in five public places within the limits of such Town and shall have the same powers and duties as inspectors or clerks in municipal elections and the election shall be so conducted.

Done in office this ___ day of _____, 20__.

Judge of Probate

State of Alabama)
_____ County)

TO ANY SHERIFF OF THE STATE OF ALABAMA, GREETINGS:

You are hereby commanded to notify _____, _____, and _____ that I have this day appointed them inspectors to hold an election at _____ [place] in the Town of _____ on the ___ day of _____, 20__ for the purpose of electing a mayor and five councilmembers from the Town at-large, and shall give thirty days' notice of the time and place of such election by posting a notice in five public places within the limits of such Town.

Witness my hand this ___ day of _____, 20__.

Judge of Probate

Executed by serving a copy of the within on _____, _____, and _____ on the ___ day of _____, 20__.

Sheriff

Other Incorporation Records

The following items must be prepared by the election inspectors or probate judge:

- An election tally sheet signed by the election inspectors similar to the following:

MAYOR

VOTES

TOWN COUNCIL

VOTES

- List of electors qualified to vote in the election signed by the election inspectors.
- Two lists of electors who voted at the election signed by election inspectors.
- Official ballot used similar to the following:

OFFICIAL BALLOT

___ day of _____, 20__

Town of _____

_____ County

Instructions: To vote for any candidate make a cross (X) in the square in the appropriate column according to your choice.

Name of Officers to be Voted for

MAYOR

() _____
() _____

TOWN COUNCIL

() _____
() _____
() _____
() _____
() _____
() _____

- A copy of the tally sheet signed by the election inspectors.
- Order of the Probate Judge confirming and approving the election.



The Alabama League of Municipalities was organized in 1935 and has served since that time as the recognized voice of the cities and towns of Alabama. Through the years, the League has grown steadily and now serves 450 member municipalities. This voluntary membership brings officials of cities and towns together in a fellowship of public service which strengthens and guides local government in a progressive, responsible fashion.

The League conducts continuing studies of the legislative, administrative and operational needs, problems and functions of Alabama's municipal governments; holds conferences and meetings at which views and experiences of officials may be exchanged; encourages in the people of Alabama a sympathetic appreciation of the duties, responsibilities and rights of both municipal government and the citizen; and works to secure enactment of legislation which will enable all cities and towns to perform their functions more efficiently and effectively. The primary purpose of the League is to promote understanding of municipal government and administration in Alabama and thereby advance the welfare of the people of this state. ■