

BASICS OF ANNEXATION

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This information in this paper related to annexation is a condensed version of Mr. Scott Houston's paper *Municipal Annexation in Texas* and borrows liberally if not outright from that document, both in structure and in substance, and is done so with the full permission of Mr. Scott Houston, former Deputy Executive Director and General Counsel for the Texas Municipal League. Any mistakes in this paper are mine and not his. For a more detailed analysis of Annexations in Texas, including policy considerations, please refer to that paper. I owe a tremendous amount of thanks to Mr. Houston for his allowance of my use. So.... Thank you, Scott. You are indeed a scholar and a gentleman. Finally, this paper is NOT a substitute for the law. Always refer to Chapter 43 during your annexation processes.

ANNEXATION

I. HISTORY

In 1963, the legislature enacted the Municipal Annexation Act. The Act provided procedures for annexation and created the concept of extraterritorial jurisdiction (ETJ). Codified in Chapters 42 and 43 of the Texas Local Government Code (the "Code") the Act, as the name suggests, regulates municipal annexation. The next major piece of legislation regarding annexation occurred during the 1999 legislative session and substantially amended the annexation laws. S.B. 89 was a complete rewrite of Texas annexation laws and set out specific process required to be followed prior to annexation areas of land based on population density.

While assaults on annexation authority continued in the public discourse and with bills filed during various legislative sessions annexation authority remained unchanged until the 2007 legislative session when H.B. 1472 was enacted requiring the mandatory offer of a development agreement in lieu of annexation for land with agricultural, wildlife and timberland tax exemptions.

In 2015, Senate Bill 6 and House Bill 6 were filed during a special session. Senate Bill 6 passed and became effective on December 1, 2017. Senate Bill 6 required landowner or voter approval of annexations in "Tier 2" cities, those cities located in the state's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process. All remaining cities, "Tier 1" cities, continued to operate under the previous rules with minor modifications but no requirement of voter approval.

In 2019, several bills were adopted which impacted annexation:

House Bill 347 ended most unilateral annexations by any city, regardless of population or location. Specifically, the bill: (1) eliminated the distinction between Tier 1 and Tier 2 cities and counties created by S.B. 6; (2) eliminated existing annexation authority that applied to Tier 1 cities and requires most annexations subject to the three consent annexation procedures that allow for annexation: (a) on request of the each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, petition of landowners; and (3) authorizes certain narrowly-defined types of annexation (city-owned airports, navigable streams,

strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure similar to the previous law.

House Bill 4257, related to election-approved annexations, applies to Chapter 43, Subchapter C-4 and provides that: (1) the disapproval of the proposed annexation of an area does not affect any existing legal obligation of the city proposing the annexation to continue to provide governmental services in the area, including water or wastewater services, regardless of whether the municipality holds a certificate of convenience and necessity to serve the area; and (2) a city that makes a wholesale sale of water to a special district may not charge rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of a proposed annexation.

Senate Bill 1024 applies only to “consent exempt” annexations and provides that: (1) a city with a population of 350,000 or less shall provide access to services provided to an annexed area under a service plan that is identical or substantially similar to access to those services in the city; (2) a person residing in an annexed area subject to a service plan may apply for a writ of mandamus against a city that fails to provide access to services in accordance with (1); (3) in the action for the writ: (a) the court may order the parties to participate in mediation; (b) the city has the burden of proving that it complied with (1); (c) the person may provide evidence that the costs for the person to access the services are disproportionate to the costs incurred by a municipal resident to access those services; and (d) if the person prevails, the city shall disannex the property that is the subject of the suit within a reasonable period specified by the court or comply with (1); and (e) the court shall award the person’s attorney’s fees and costs incurred in bringing the action for the writ; and (4) a city’s governmental immunity to suit and from liability is waived and abolished to the extent of liability created under the bill.

Finally, Senate Bill 1303 provides that: (1) every city must maintain a copy of the map of city’s boundaries and extraterritorial jurisdiction in a location that is easily accessible to the public, including: (a) the city secretary’s office and the city engineer’s office, if the city has an engineer; and (b) if the city maintains a website, on the city’s website; (2) a city shall make a copy of the map under (1), above, available without charge; (3) not later than January 1, 2020, a home rule city shall: (a) create, or contract for the creation of, and make publicly available a digital map that must be made available without charge and in a format widely used by common geographic information system software; (b) if it maintains a website, make the digital map available on that website; and (c) if it does not have common geographic information system software, make the digital map available in any other widely used electronic format; and (4) if a city plans to annex under the “consent exempt” provisions, a home rule city must: (a) provide notice to any area that would be newly included in the city’s ETJ by the expansion of the city’s ETJ resulting from the proposed annexation; and (b) include in the notice for each hearing a statement that the completed annexation of the area will expand the ETJ, a description of the area that would be newly included in the ETJ, a statement of the purpose of ETJ designation as provided by state law, and a brief description of each municipal ordinance that would be applicable, as authorized by state law relating to subdivision ordinances, in the area that would be newly included in the ETJ; and (c) before the city may institute annexation proceedings, create, or contract for the creation of, and

make publicly available, without charge and in a widely used electronic format, a digital map that identifies the area proposed for annexation and any area that would be newly included in the ETJ as a result of the proposed annexation.

II. OVERVIEW

A. Authority

All municipalities must look to Chapter 43 of the Code to determine their authority to annex, although more restrictive home rule charter provisions may control.

B. Procedures

The procedures that a city must follow for an annexation are codified in Texas Local Government Code Chapter 43:

1. Subchapter C-3 (annexation on request of each landowner).
2. Subchapter C-4 (annexation of area with population less than 200 - petition).
3. Subchapter C-5 (annexation of area with population of 200 or more-election/petition).

The procedures for annexations which do not require consent are codified in Texas Local Government Code Chapter 43:

1. Subchapter C (Limitations and requirements regarding annexations exempted from consent annexation procedures); and
2. C-1 (Annexation procedure for areas exempted from consent annexation procedures).

Chapter 43 now requires landowner and/or voter approval of annexations. The procedures are found in Subchapters C-3 (annexation on request of each landowner), C-4 (annexation of area with population less than 200 - petition), and C-5 (annexation of area with population of 200 or more – election/petition).

Chapter 43, Subchapters A-1 and E include certain annexations which may still occur without the consent of the property owner/voter:

- (1) Section 43.0115 (Enclave);
- (2) Section 43.0116 (Industrial District);
- (3) Section 43.012 (Area Owned by Type-A Municipality);
- (4) Section 43.013 (Navigable Stream);
- (5) Section 43.0751(h) (Strategic Partnership);

- (6) Section 43.101 (Municipally Owned Reservoir);
- (7) Section 43.102 (Municipally Owned Airport); and
- (8) Section 43.1055 (Road and Right-of-Way).

III. CONSENT ANNEXATIONS

Texas law now requires landowners' or voters' approval of most annexations. The Code prescribes the procedures that must be followed in annexing.

A. Requirement to Offer Development Agreement

Section 43.016 of the Code provides that a city may not annex an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers a development agreement to the landowner that would:

- guarantee the continuation of the extraterritorial status of the area; and
- authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber.

Upon receiving an offer to enter into a development agreement the landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. An annexation that is completed without offering an agreement is void. As such, a city should document the offer and its acceptance or rejection. Even if an annexation is voluntary, a city should document the fact that the owner has rejected the offer of an agreement.

Other than prohibiting a City from annexing an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers to make a development agreement, Section 43.016 is silent as to when the offer must be made. Each city should decide when it is appropriate to offer the agreement.

B. Requirement that Area be in the City's ETJ and Map/Notice

An area to be annexed must be within the city's ETJ under Section 43.014. In addition, under §§42.022 and 43.014, the area to be annexed cannot be located within the ETJ of another city.

C. Authority and Process to Annex

1. Petition of Landowner

A city may annex an area if each owner of land in the area requests the annexation. TEX. LOC. GOV'T CODE § 43.0671. This annexation is governed by Subchapter C-3 of Chapter 43.

a. Written Service Agreement

The governing body of a city that elects to annex an area by petition of landowner must first negotiate and enter into a written agreement with the owners of land in the area for the provision of services in the area. The agreement must include: (1) a list of each service the city will provide on the effective date of the annexation; and (2) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation. The city is not required to provide a service that is not included in the agreement. §43.0672.

b. Notice of Proposed Annexation, Public Hearing, and Ordinance Adoption

Before a city may adopt an ordinance annexing an area by petition of landowners, the governing body must conduct a public hearing. The governing body must provide persons interested in the annexation the opportunity to be heard. After the public hearing, the governing body may immediately adopt an ordinance annexing the area.

The city must post notice of the hearing on its website if it has one and publish notice of the hearing in a newspaper of general circulation in the city and in the area proposed for annexation. The notice for the hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing. The notice must be posted on the city’s website on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until the date of the hearing. §43.0673.

In summary, the sequence for annexation of this type could be as follows:

- 1) Receive petition from each landowner;
- 2) Determine applicability of Section 43.016 and act accordingly;
- 3) Negotiate and execute written service agreement;
- 4) city council calls public hearing;
- 5) provide written notice to school districts¹ and public entities before the publication requirement in (6), below²;
- 6) publish notice in the newspaper for the hearing at least once on or after the 20th day but before the 10th day before the date of the hearing and also post on city’s website at same time and leave up until date of hearing;
- 7) Conduct first public hearing and adopt annexation ordinance; and
- 8) Complete post-annexation procedures.

¹ See Section 43.905 for the requirements that must be included in the notice.

² The notice for the hearing must be published at least once on or after the 20th day but before the 10th day before the date of the hearing and Section 43.9051 provides that “A municipality that proposes to annex

an area shall provide written notice of the proposed annexation within the period prescribed for providing the notice of the first hearing under Section ...43.0673... to each public entity that is located in or provides services to the area proposed for annexation.

2. Area with Population Less than 200 by Petition

A city may annex an area with a population of less than 200 only if the following conditions are met, as applicable: (1) the city obtains consent to annex the area through a petition signed by more than 50 percent of the registered voters of the area; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the petition described by (1) is signed by more than 50 percent of the owners of land in the area. TEX. LOC. GOV'T CODE § 43.0681.³ This annexation procedure is governed by Subchapter C-4 of chapter 43.

a. Adoption of Resolution

The governing body of the municipality that proposes to annex an area under this subchapter must adopt a resolution that includes:

- 1) a statement of the city's intent to annex the area;
- 2) a detailed description and map of the area;
- 3) a description of each service to be provided by the city in the area on or after the effective date of the annexation, including, as applicable: (A) police protection; (B) fire protection; (C) emergency medical services; (D) solid waste collection;⁴ (E) operation and maintenance of water and wastewater facilities in the annexed area; (F) operation and maintenance of roads and streets, including road and street lighting; (G) operation and maintenance of parks, playgrounds, and swimming pools; and (H) operation and maintenance of any other publicly owned facility, building, or service;
- 4) a list of each service the city will provide on the effective date of the annexation; and
- 5) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation.

TEX. LOC. GOV'T CODE §43.0682.

b. Notice of Proposed Annexation and Public Hearing

Not later than the seventh day after the date the governing body of the city adopts the resolution under Section 43.0682, the city must mail to each resident and property owner in the area proposed to be annexed notification of the proposed annexation that includes: (1) notice of the public hearing required by Section 43.0684; (2) an explanation of the 180-day petition period described by Section 43.0685; and (3) a description, list, and schedule of services to be provided by the city in the area on or after annexation as provided by Section 43.0682. TEX. LOC. GOV'T CODE §43.0683.

³ Note that this provision gives *landowners* a veto over voters.

⁴ A new provision in new Subchapter C was added by S.B. 6 (2017) relating to solid waste services in an

annexation. Section 43.0661 prohibits a city from mandating the use of its solid waste provider for two years in the area.

The governing body of a city must conduct at least one public hearing not earlier than the 21st day and not later than the 30th day after the date the governing body adopts the resolution under Section 43.0682. TEX. LOC. GOV'T CODE §43.0684.

c. Petition, Results, Election in City, and Retaliation

The petition required by Section 43.0681 may be signed only by a registered voter of the area proposed to be annexed, except if the registered voters of the area proposed to be annexed do not own more than 50 percent of the land in the area, the petition required by Section 43.0681 may also be signed by the owners of land in the area that are not registered voters. §43.0685.

The requirements for the petition are as follows:

- 1) The city may provide for an owner of land in the area that is not a resident of the area to sign the petition electronically.
- 2) The petition must clearly indicate that the person is signing as a registered voter of the area, an owner of land in the area, or both.
- 3) The city may collect signatures on the petition only during the period beginning on the 31st day after the date the governing body of the municipality adopts the resolution under Section 43.0682 and ending on the 180th day after the date the resolution is adopted.
- 4) The petition must clearly state that a person signing the petition is consenting to the proposed annexation.
- 5) The petition must include a map of and describe the area proposed to be annexed. Signatures collected on the petition must be in writing (or electronically).
- 6) Chapter 277, Election Code, applies to a petition.

When the petition period described by (2), above, ends, the petition shall be verified by the city secretary or other person responsible for verifying signatures. §43.0686.

The city must notify the residents and property owners of the area proposed to be annexed of the results of the petition. If the city does not obtain the number of signatures on the petition required to annex the area, the city may not annex the area and may not adopt another resolution to annex the area until the first anniversary of the date the petition period ended. §43.0686.

If the city obtains the number of signatures on the petition required to annex the area, the city may annex the area after: (1) notifying the residents and property owners of the area proposed to be annexed of the results of the petition; (2) holding a public hearing at which members of the public are given an opportunity to be heard; and (3) holding a final public

hearing not earlier than the 10th day after the date of the first public hearing at which the ordinance annexing the area may be adopted. §43.0686.

If a petition protesting the annexation of an area is signed by a number of registered voters of the city proposing the annexation equal to at least 50 percent of the number of voters who voted in the most recent municipal election; and is received by the secretary of the city before the date the petition period above ends, the city may not complete the annexation of the area without approval of a majority of the voters of the city voting at an election called and held for that purpose. §43.0687.

A city may not retaliate for the disapproval of the proposed annexation of an area⁵. Disapproval does not affect any existing legal obligation of the city proposing the annexation to continue to provide governmental services in the area, including water or wastewater services. A city may not initiate a rate proceeding solely because of the disapproval of a proposed annexation of an area. §43.0688.

In summary, the sequence for annexation of this type could be as follows (this example does not include the possible in-city election option under §43.0687):

- 1) Determine applicability of Section 43.016 and act accordingly;
- 2) Adoption of resolution of intent to annex area, including services to be provided;
- 3) Not later than seventh day after adopting the resolution of intent, mail notice of resolution adoption to residents and property owners in area providing: (1) notice of public hearing; (2) explanation of petition timing requirements; and (3) description of services to be provided;
- 4) provide written notice to school districts⁶ and public entities not later than the seventh day after adopting resolution in 4, above⁷;
- 5) conduct at least one public hearing not earlier than the 21st day and not later than the 30th day after the date the governing body adopts the resolution of intent;
- 6) City obtains and verifies consent to annex the area by petition;
- 7) Notify residents and owners and hold another public hearing;
- 8) hold final public hearing not earlier than the 10th day after the date of the first public hearing and adopt annexation ordinance;

⁵ This is true regardless of whether the city holds a CCN to serve the area. In addition, a city that makes a wholesale sale of water to a special district operating under Chapter 36 or Title 4, Water Code, may not charge rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of a proposed annexation under this subchapter.

⁶ See Section 43.905 for the requirements that must be included in the notice.

⁷ Not later than the seventh day after the date the governing body of the municipality adopts the resolution, it must provide notice because Section 43.9051 provides that "A municipality that proposes to annex an area shall provide written notice of the proposed annexation within the period prescribed for providing the notice of the first hearing under Section ...43.0683... to each public entity that is located in or provides services to the area proposed for annexation.

- 9) Complete post-annexation procedures.

3. Area with Population of 200 or More by Election

A city may annex an area with a population of 200 or more only if the following conditions are met, as applicable: (1) the city holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the city obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area. TEX. LOC. GOV'T CODE § 43.0691.⁸

This annexation procedure is governed by Subchapter C-5 of chapter 43.

a. Adoption of Resolution

The governing body of the municipality that proposes to annex an area under this subchapter must adopt a resolution that includes:

- 1) a statement of the city's intent to annex the area;
- 2) a detailed description and map of the area;
- 3) a description of each service to be provided by the city in the area on or after the effective date of the annexation, including, as applicable: (A) police protection; (B) fire protection; (C) emergency medical services; (D) solid waste collection;⁹ (E) operation and maintenance of water and wastewater facilities in the annexed area; (F) operation and maintenance of roads and streets, including road and street lighting; (G) operation and maintenance of parks, playgrounds, and swimming pools; and (H) operation and maintenance of any other publicly owned facility, building, or service;
- 4) a list of each service the city will provide on the effective date of the annexation; and
- 5) a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation.

TEX. LOC. GOV'T CODE §43.0692.

b. Notice of Proposed Annexation and Public Hearing

Not later than the seventh day after the date the governing body of the city adopts the resolution under Section 43.0692, the city must mail to each property owner in the area proposed to be annexed, notification of the proposed annexation that includes: (1) notice of the public hearing required by Section 43.0694; (2) notice that an election on the question of annexing the area will be held; and (3) a description, list, and schedule of

⁸ Note that this provision also gives *landowners* a veto over voters.

⁹ A new provision in new Subchapter C was added by S.B. 6 (2017) relating to solid waste services in an

annexation. Section 43.0661 prohibits a city from mandating the use of its solid waste provider for two years in the area.

services to be provided by the city in the area on or after annexation as provided by Section 43.0692. TEX. LOC. GOV'T CODE §43.0693.

The governing body of a city must conduct an initial public hearing not earlier than the 21st day and not later than the 30th day after the date the governing body adopts the resolution. The governing body must conduct at least one additional public hearing not earlier than the 31st day and not later than the 90th day after the date the governing body adopts a resolution. TEX. LOC. GOV'T CODE §43.0694.

c. Election, Petition, Election in City, and Retaliation

If the registered voters in the area proposed to be annexed do not own more than 50 percent of the land in the area, the city must obtain consent to the annexation through a petition signed by more than 50 percent of the owners of land in the area in addition to the election described below. (The petition process is the same as the petition for an area with less than 200 population, discussed in a previous section.) TEX. LOC. GOV'T CODE §43.0695.

A city shall order an election on the question of annexing an area to be held on the first uniform election date that falls on or after: (1) the 90th day after the date the governing body of the city adopts the resolution under Section 43.0692; or (2) if the consent of the owners of land in the area is required under Section 43.0695, the 78th day after the date the petition period to obtain that consent ends.

The election shall be held in the same manner as general elections of the city. The city shall pay for the costs of holding the election. A city that holds an election may not hold another election on the question of annexation before the corresponding uniform election date of the following year. TEX. LOC. GOV'T CODE §43.0696.

Following the election, the city must notify the residents of the area proposed to be annexed of the results of the election and, if applicable, of the petition required by Section 43.0695.

If a majority of qualified voters do not approve the proposed annexation, or if the city is required to petition owners of land in the area under Section 43.0695 and does not obtain the required number of signatures, the city may not annex the area and may not adopt another resolution to annex the area until the first anniversary of the date of the adoption of the resolution.

If a majority of qualified voters approve the proposed annexation, and if the city, as applicable, obtains the required number of petition signatures under Section 43.0695, the city may annex the area after: (1) providing notice to the residents of the area to be annexed; (2) holding a public hearing at which members of the public are given an opportunity to be heard; and (3) holding a final public hearing not earlier than the 10th day after the date of the first public hearing at which the ordinance annexing the area may be adopted. TEX. LOC. GOV'T CODE §43.0697.

If a petition protesting the annexation of an area is signed by a number of registered voters of the city proposing the annexation equal to at least 50 percent of the number of voters who voted in the most recent municipal election and is received by the secretary of the city before the date the petition period above ends, the city may not complete the annexation of the area without approval of a majority of the voters of the city voting at an election called and held for that purpose. §43.0698.

A city may not retaliate for the disapproval of the proposed annexation of an area¹⁰ and disapproval does not affect any existing legal obligation of the city proposing the annexation to continue to provide governmental services in the area, including water or wastewater services. A city may not initiate a rate proceeding solely because of the disapproval of a proposed annexation of an area. §43.0699.

In summary, the sequence for annexation of this type could be as follows (this example does not include the possible in-city election option under §43.0698):

- 1) Adoption of resolution of intent to annex area, including services to be provided;
- 2) Determine applicability of Section 43.016 and act accordingly;
- 3) Not later than the seventh day after the date the governing body of the city adopts the resolution of intent, mail to each resident and property owner in the area proposed to be annexed notification of the proposed annexation that includes: (1) notice of the initial public hearing; (2) notice that an election on the question of annexing the area will be held; and (3) a description, list, and schedule of services to be provided;
- 4) provide written notice to school districts¹¹ and public entities not later than the seventh day after adopting resolution in 4, above¹²;
- 5) conduct an initial public hearing not earlier than the 21st day and not later than the 30th day after the date the governing body adopts the resolution of intent;
- 6) conduct at least one additional public hearing not earlier than the 31st day and not later than the 90th day after the date the governing body adopts a resolution of intent;
- 7) City obtains consent through election and, if needed, petition;
- 8) annex the area after: (1) providing notice to the residents of the area to be annexed; (2) holding a public hearing at which members of the public are given an opportunity to be heard; and (3) holding a final public

¹⁰ This is true regardless of whether the city holds a CCN to serve the area. In addition, a city that makes a wholesale sale of water to a special district operating under Chapter 36 or Title 4, Water Code, may not charge rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of a proposed annexation under this subchapter.

¹¹ See Section 43.905.

¹² Not later than the seventh day after the date the governing body of the municipality adopts the resolution, it must provide notice because Section 43.9051 provides that “A municipality that proposes to annex an area shall provide written notice of the proposed annexation within the period prescribed for providing the notice of the first hearing under Section ...43.0693... to each public entity that is located in or provides services to the area proposed for annexation.

- hearing not earlier than the 10th day after the date of the first public hearing at which the ordinance annexing the area may be adopted; and
- 9) Complete post-annexation procedures.

IV. CONSENT EXEMPT ANNEXATIONS

A. Requirement to Offer Development Agreement

This requirement is exactly the same as that discussed in Section III.A.

B. Requirement that Area be in the City's ETJ and Map/Notice

This requirement is exactly the same as that discussed in Section III.B.

C. Authority to Annex

Chapter 43, Subchapters A-1 and E contain a handful of “consent exempt” annexation provisions. They are very specific to certain situations, and include:

- (1) Section 43.0115 (Enclave);
- (2) Section 43.0116 (Industrial District);
- (3) Section 43.012 (Area Owned by Type-A Municipality);
- (4) Section 43.013 (Navigable Stream);
- (5) Section 43.0751(h) (Strategic Partnership);
- (6) Section 43.101 (Municipally Owned Reservoir);
- (7) Section 43.102 (Municipally Owned Airport); and
- (8) Section 43.1055 (Road and Right-of-Way).

The applicable procedures are found in Subchapter C-1, with the limiting provisions in Subchapter C being applicable.¹³

Beyond the above provisions, the only authority to annex is by consent, discussed above. “Too bad, so sad,” one once said.

D. Procedures to Annex an Area

Prior to any other action, the city must determine whether an area is subject to the requirements of Section 43.016¹⁴ – required offer of development agreement (see III.A. above) – and must comply with those requirements. To begin the annexation process, the city council must direct its planning

¹³ See Section 43.0505, which provides that the provisions in Subchapter C apply only to an annexation under Subchapter C-1. Weird, right? Why not just combine them into one subchapter?

¹⁴ And Section 43.033(a)(7) for general law cities annexing without consent.

department or other appropriate city department to prepare a service plan that details the specific municipal services that will be provided to the area after it has been annexed. *Id.* at 43.065(a).¹⁵

Before a city may institute annexation proceedings, the city council must give notice of, and conduct, two public hearings at which persons interested in the annexation are given an opportunity to be heard. *Id.* at §43.063(a). The city council must call the first public hearing on the proposed annexation and cause a copy of the notice of the hearing to be published. The notice of each hearing must be published in a newspaper of general circulation in the city and the area proposed for annexation at least once on or after the 20th day, but before the 10th day before the date of each hearing.¹⁶ *Id.* at 43.063(c). In addition, S.B. 1303 (2019) added a provision that applies to home rule cities only and provides that the notice must be published “in any area that would be newly included in the municipality’s extraterritorial jurisdiction by the expansion of the municipality’s extraterritorial jurisdiction resulting from the proposed annexation.” *Id.*¹⁷

In addition to the notice required above, S.B. 1303 (2019) also requires a home rule city, before it may institute annexation proceedings, to create, or contract for the creation of, and make publicly available a digital map that identifies the area proposed for annexation and any area that would be newly included in the city’s extraterritorial jurisdiction as a result of the proposed annexation. The digital map must be made available without charge and in a format widely used by common geographic information system software or in any other widely used electronic format if the city does not have common geographic information system software. If the city maintains an Internet website, the city shall make the digital map available on the website. *Id.* at §43.0635

The city must also give written notice to any school district in the area and public entity that provides service in the area¹⁸ at this time. *Id.* at §43.905¹⁹ & 43.9051. This procedure is repeated for the second hearing. Nothing prohibits a city from expediting the process by publishing the notice of the hearings and/or holding the hearings close together (or perhaps even in one notice and as separate agenda items at the same meeting) so long as the appropriate timeframe is followed.

¹⁵ Section 43.056 relating to provision of services continue to apply to a consent exempt annexation. The detailed sections on how those provision function has been removed because these will be used so infrequently.

¹⁶ When counting the ten-day interval, do NOT include either the day the notice was published, nor the day of the hearing.

¹⁷ The notice for each hearing must include: (1) a statement that the completed annexation of the area will expand the municipality’s extraterritorial jurisdiction; (2) a description of the area that would be newly included in the municipality’s extraterritorial jurisdiction; (3) a statement of the purpose of extraterritorial jurisdiction designation as provided by Section 42.001; and (4) a brief description of each municipal ordinance that would be applicable, as authorized by Section 212.003, in the area that would

be newly included in the municipality’s extraterritorial jurisdiction.

¹⁸ “Public entity” includes a county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district. The notice shall contain a description of: (1) the area proposed for annexation; (2) any financial impact on the public entity or political subdivision resulting from the annexation, including any changes in the public entity’s or political subdivision’s revenues or maintenance and operation costs; and (3) any proposal the city has to abate, reduce, or limit any financial impact on the public entity or political subdivision. The city MAY NOT ANNEX unless it has provided this notice.

¹⁹ The city MAY NOT ANNEX unless it has provided this notice: “The municipality may not proceed with the annexation unless the municipality provides the required notice.”

All persons attending the hearings must be given an opportunity to express their views regarding the proposed annexation and the service plan. The hearings must be conducted on or after the 40th day and before the 20th day before the date of the institution of the proceedings. *Id.* at §43.063(a).²⁰ The date of the “institution of proceedings” is the date the annexation ordinance is introduced on first reading. If a city requires only one reading (as in the case of a general law city that has not imposed the requirement of additional readings on itself), the proceedings are instituted and completed at the same time.²¹

In addition, the annexation of an area must be completed within 90 days after the date the city council institutes the annexation proceedings, or the proceedings are void. *Id.* at 43.064(a). The charters of some home rule cities require that an annexation ordinance must be introduced at one meeting before it can be passed at a subsequent meeting, or that the ordinance be read and voted on at two, sometimes three, separate meetings before finally being passed. Thus, the ordinance in a city requiring multiple readings must be finally passed within 90 days of the first reading.²²

Subchapter C-1 now applies only to an annexation of an area that contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract (which should include all of the annexations authorized in IV.C., above). Written notice must be sent before the 30th day before the date of the first hearing to each:

- 1) property owner in the area to be annexed;
- 2) public entity, including any: (A) municipality, county, fire protection service provider, including a volunteer fire department, and emergency medical services provider, including a volunteer emergency medical services provider; and (B) municipal utility district, water control and improvement district, or other district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;
- 3) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

²⁰ Note that a city is required to hold the two public hearings in the specified time frame. Nothing prohibits a city from holding more than two hearings, and so long as at least two of the hearings are within the prescribed time frame, the statutory requirements have been met. *Woodruff v. City of Laredo*, 686 S.W.2d 692, 696 (Tex. App. San Antonio 1985, writ ref'd n.r.e.).

²¹ *Jimenez v. City of Aransas Pass*, No. 13-17-00514-CV, 2018 WL 6565090, at *3 (Tex. App. Dec. 13, 2018)(Also standing for the proposition that the failure to place an area in a three-year plan under the old law was a procedural defect).

²² *Knapp v. City of El Paso*, 586 S.W.2d 216, 218 (Tex. App. - El Paso 1979, writ ref'd n.r.e.); One recent case, *City of Cresson v. City of Granbury*, 245 S.W.3d 61, 66 (Tex. App.—Fort Worth 2008), erroneously analyzed this issue. In a commonly-made mistake, the court seemed to read the provision as meaning that the whole annexation process must be completed in 90 days, which is incorrect: “Under the current statutory scheme, municipalities have ninety days to complete the annexation process.”

Id. at §43.062(b). All annexations under Subchapter C-1 require written notice by certified mail to each railroad company with right-of-way on the area proposed for annexation. *Id.* at §43.063(c) & (f).

In addition, the city must post notice of the hearings on the city’s website, if the city has a website. *Id.* at §43.063(c).²³

If a written protest is filed by more than ten percent of the adult residents of the area proposed for annexation within ten days after publication of notice, at least one of the public hearings must be held in the area proposed for annexation if a suitable site is reasonably available. *Id.* at §43.063(b).

Finally, the city council, acting at a meeting that is separated by the appropriate time period from the two required hearings, adopts an ordinance annexing the tract and approving the service plan for the tract. When the annexation ordinance is passed, a copy of the service plan is attached to the ordinance, and the plan becomes a contractual obligation of the city.

In summary, the sequence for annexation of an area exempt from an annexation plan could be as follows (note that S.B. 1303 (2019) requires a home rule city to – prior to the first reading of the ordinance – create, or contract for the creation of, and make publicly available a digital map that identifies the area proposed for annexation and any area that would be newly included in the city’s extraterritorial jurisdiction as a result of the proposed annexation. The digital map must be made available without charge and in a format widely used by common geographic information system software or in any other widely used electronic format if the city does not have common geographic information system software. If the city maintains an Internet website, the city shall make the digital map available on the website. *Id.* at §43.0635):

- 1) Determine applicability of Section 43.016 and act accordingly;
- 2) preparation of the service plan;
- 3) provide written notice to property owners, railroads, and public and private entities;
- 4) city council calls two public hearings to be held at some time which is not less than 10, nor more than 20, days from the day of publication of the notice of the hearings;
- 5) provide written notice to public entities within the period for noticing the hearings in (6), below;²⁴

²³ The time requirements for posting are the same for the website, except the notice must remain on the site until the date of the hearing.

²⁴ This was added by S.B. 6 in 2017. A city must provide notice because Section 43.9051 provides that “A municipality that proposes to annex an area shall provide written notice of the proposed annexation within the period prescribed for providing the notice of the first hearing under Section ...43.063... to each public entity that is located in or provides services to the area proposed for annexation.” “Public entity”

includes a county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or special district. The notice shall contain a description of: (1) the area proposed for annexation; (2) any financial impact on the public entity or political subdivision resulting from the annexation, including any changes in the public entity’s or political subdivision’s revenues or maintenance and operation costs; and (3) any proposal the city has to abate, reduce, or limit any

- 6) notice of the hearings is published in a newspaper of general circulation in the city and the area to be annexed and on the city's Internet website, if the city has one, and written notice is sent to school districts and public entities in the area (a home rule city must also post notice of the hearings in any area that will come into the city's ETJ because of the annexation);
- 7) a 10 to 20 day interval between the publication and each of the hearings;
- 8) public hearings on the proposed annexation at which all interested persons are heard;
- 9) a 20 to 40 day interval between the hearings and the date that the annexation ordinance is passed;
- 10) city council meets and passes the annexation ordinance; and
- 11) proper post-annexation procedures and notice are completed.

E. Other Applicable Provisions

Procedures for consent exempt annexations are in Chapter 43, Subchapter C-1, of the Local Government Code. However, §43.062 and Subchapter C make the following provisions from Subchapter C applicable to exempt Subchapter C-1 annexations:

1. §43.002, *Continuation of Land Use*: prevents a city, with certain exceptions, from prohibiting a person from continuing to use land in the manner in which it was being used prior to annexation (cities can still impose regulations relating to: location of sexually oriented businesses, colonias, preventing imminent destruction of property or injury to persons, public nuisances, flood control, storage and use of hazardous substances, sale and use of fireworks in some instances, or discharge of firearms on most parcels). Made applicable by Subchapter A.
2. §43.014, *Restricting annexations to the ETJ unless the city owns the property*. Made applicable by Subchapter C.
3. §43.054, *Width Requirements*: area must generally be at least 1,000 feet wide unless the boundaries of the city are contiguous to the area on at least two sides, with certain exceptions. Made applicable by Section 43.062(a).
4. §43.0545, *Annexation of Certain Adjacent Areas*.²⁵ Made applicable by Section §43.062(a).

financial impact on the public entity or political subdivision. The city MAY NOT ANNEX unless it has provided this notice.

²⁵*City of Missouri City v. State ex rel. City of Alvin*, 123 S.W.3d 606, 616 (Tex. App.-Houston [14th dist.]

2003)(holding that §43.0545 prohibits the annexation of land that lies within a city's extraterritorial jurisdiction solely by virtue of the fact the land is "contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point.").

5. §43.055, *Maximum Amount Per Year*: limiting the maximum amount of annexation each year to ten percent of the incorporated area of the municipality with certain exceptions. Made applicable Section 43.062(a).²⁶

6. §43.056(b)-(o), but not (d) or (h)-(k)²⁷, *Provision of Services to Annexed Area*: cities must provide full municipal services to annexed areas within 2 ½ years, unless certain services cannot be reasonably provided within that time and a city proposes a schedule to provide services within 4 ½ years. However, capital improvements must only be substantially completed within that 4 ½ year period. TEX. LOC. GOV'T CODE §43.056(b) & (e). "Full municipal services" means services provided by the annexing city within its full-purpose boundaries, including water and wastewater services and excluding gas or electrical service. *Id.* at §43.056(c). Also, a city is not required to provide a uniform level of services to each area of the city if different characteristics of topography, land use, and population density constitute a sufficient basis for providing different levels of service.²⁸ *Id.* at §43.056(m). Made applicable by Subchapter C.

7. §43.057, *Annexation That Surrounds an Area*. Made applicable by TEX. LOC. GOV'T CODE §43.062(a).

²⁶ The maximum of ten percent per year may be carried over up to thirty percent if not used. TEX. LOC. GOV'T CODE §43.055(b), (c). In addition, certain types of annexations do not apply to the percentage requirement, including most petition-based annexations and annexation of an area owned by the city, county, state, or federal government and used for a public purpose. *Id.* at §43.055(a)(1), (2), (3), & (4).

²⁷ Section 43.065(b) provides that "[s]ections 43.056(b)-(o) apply to the annexation of an area to which this subchapter applies." However, Section 17(e) of S.B. 89 (1999) provides that neither (b) nor (h)-(k) apply. This conflict can largely be resolved by reviewing the relevant provisions of Section 43.056. Subsections (d) and (h) are Houston-only under current population – 1.5 million or more or 1.6 million or more, respectively, so generally didn't apply. S.B.

6 (2017) repealed them so now we know. Subsection (i) directs a city to prepare a revised service plan for an area if the annexed area is smaller than that originally proposed, and can easily be complied with. Subsections (j) and (k) are somewhat more troubling, and may not be able to be completely complied with. Why? Those sections reference negotiations and other procedures that are unique to plan annexations, and were probably made applicable due to a drafting error. ²⁸ Under *City of Heath v. King*, 665 S.W.2d 133, 136 (Tex App.--Dallas 1983, no writ), whether a city provides services substantially equivalent to those furnished other areas with similar characteristics involves two considerations: (1) are there two separate areas of the city with similar characteristics; and if so, (2) are services being furnished to one area disparate from those being furnished to the other?

V. OTHER MATTERS AFFECTING ALL ANNEXATIONS

Other annexation matters that must be addressed include notifying the Texas Secretary of State, state comptroller, county clerk, telecommunications utilities, and others, and preparing an updated map of the city. Keep in mind that other entities may be notified, as appropriate, for each individual city.²⁹

A. Secretary of State Notification

At one time, cities were supposed to notify the Texas secretary of state's office so that it could correctly certify the legal validity of the annexation to the United States Department of Census. That is no longer required because the Census suspended the program requiring it:

http://www2.census.gov/geo/pdfs/partnerships/bas/bas_suspension.pdf

That program was called the Boundary and Annexation Survey. Additional details are available from:

Office of the Texas Secretary of State

Government Filings Section

ATTN: Miranda Zepeda

P.O. Box 13375

Austin, Texas 78711-3375

512.463.6182

mzepeda@sos.texas.gov

The Texas Secretary of State's website is www.sos.state.tx.us, and the Census Bureau's is www.census.gov.

B. Comptroller and Appraisal District Notification

Notice must also be provided to the Texas comptroller's office. This ensures that the city will receive any sales taxes generated in the newly annexed area. The city secretary must submit by certified mail a certified copy of the annexation ordinance and a map of the entire city that shows

²⁹ For example, a city may want to notify the Texas Department of Transportation to move the city limits sign on a state highway, and/or the Texas Commission

on Fire Protection regarding insurance ratings for the newly annexed area.

the change in boundaries, with the annexed portion clearly distinguished, resulting from the annexation. TEX. TAX CODE §321.102. The Sales Tax Division of the Comptroller's office may be reached at 800-252-5555 or www.window.state.tx.us.

Also, Texas Tax Code Section 6.07 provides that if “an existing taxing unit's boundaries are altered, the unit shall notify the appraisal office of the new boundaries within 30 days after the date...its boundaries are altered.”

C. Filing with County Clerk

After the annexation ordinance is adopted, a certified copy of the ordinance should be filed in the office of the county clerk of the county in which the city is located. *See* TEX. LOC. GOV'T CODE §41.0015 (requiring certified copy of documents be filed within 30 days of preclearance – because preclearance is no longer required, the documents should be filed within 30 days of the annexation ordinance adoption).

D. Map of Municipal Boundaries and Extraterritorial Jurisdiction and Notice of ETJ Expansion

Cities are required to prepare a map that shows the boundaries of the city and its extraterritorial jurisdiction. A copy of the map must be kept in the office of the city secretary and the city engineer if the city has one.

When a city expands its ETJ by petition or annexes territory, the map must be immediately updated to include the annexed territory, including an annotation that states: (1) the date of ordinance; (2) the number of the ordinance, if any; and (3) a reference to the minutes or ordinance records in which the ordinance is recorded in full. TEX. LOC. GOV'T CODE §41.001.

S.B. 1303, enacted in 2019, provides that: (1) every city must maintain a copy of the map of city's boundaries and extraterritorial jurisdiction in a location that is easily accessible to the public, including: (a) the city secretary's office and the city engineer's office, if the city has an engineer; and (b) if the city maintains a website, on the city's website; (2) a city shall make a copy of the map under (1), above, available without charge; (3) not later than January 1, 2020, a home rule city shall: (a) create, or contract for the creation of, and make publicly available a digital map that must be made available without charge and in a format widely used by common geographic information system software; (b) if it maintains an website, make the digital map available on that website; and (c) if it does not have common geographic information system software, make the digital map available in any other widely used electronic format; and (4) if a city plans to annex under the “consent exempt” provisions that remain in the Municipal Annexation Act after the passage of H.B. 347 (summarized elsewhere in this edition), a home rule city must: (a) provide notice to any area that would be newly included in the city's ETJ by the expansion of the city's ETJ resulting from the proposed annexation; and (b) include in the notice for each hearing a statement that the completed annexation of the area will expand the ETJ, a description of the area that would be newly included in the ETJ, a statement of the purpose of ETJ designation as provided

by state law, and a brief description of each municipal ordinance that would be applicable, as authorized by state law relating to subdivision ordinances, in the area that would be newly included in the ETJ; and (c) before the city may institute annexation proceedings, create, or contract for the creation of, and make publicly available, without charge and in a widely used electronic format, a digital map that identifies the area proposed for annexation and any area that would be newly included in the ETJ as a result of the proposed annexation.

E. Disannexation

1. Disannexation for Failure to Provide Services

Section 43.141 of the Local Government Code provides that, if a city fails or refuses to provide services or to cause services to be provided to an annexed area...

(1) if the area was annexed under Subchapter C-1, within the period specified by Section 43.056 or by the service plan prepared for the area under that section; or

(2) if the area was annexed under Subchapter C-3, C-4, or C-5, within the period specified by the written agreement under Section 43.0672 or the resolution under Section 43.0682 or 43.0692, as applicable...

majority of the qualified voters of the area³⁰ may petition³¹ the governing body to disannex the area.³²

³⁰ *Freeman v. Town of Flower Mound*, 173 S.W.3d 839 (Tex.App.-Fort Worth 2005) and *Smith v. City of Brownwood*, 161 S.W.3d 675, 680 (Tex.App.-Eastland 2005, no pet.) stand for the proposition that only a majority of voters within an *entire annexed area* may petition for disannexation.

³¹ The petition for disannexation must: (1) be written; (2) request the disannexation; (3) be signed in ink or indelible pencil by the appropriate voters; (4) be signed by each voter as that person's name appears on the most recent official list of registered voters; (5) contain a note made by each voter stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate; (6) describe the area to be disannexed and have a plat or other likeness of the area attached; and (7) be presented to the secretary of the municipality. Also, the signatures to the petition need not be appended to one paper. Before the petition is

circulated among the voters, notice of the petition must be given by posting a copy of the petition for 10 days in three public places in the annexed area and by publishing a copy of the petition once in a newspaper of general circulation serving the area before the 15th day before the date the petition is first circulated. Proof of the posting and publication must be made by attaching to the petition presented to the secretary: (1) the sworn affidavit of any voter who signed the petition, stating the places and dates of the posting; and (2) the sworn affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication. *Id.* at §§43.141(d), (e) & (f).

³² Under *Alexander Oil co. v. City of Seguin*, 825 S.W.2d 434, 437 (Tex. 1991), disannexation is the only express remedy for failure to provide services under a plan. *C.f.*, §43.056(l) (writ of mandamus).

If the governing body fails or refuses to disannex the area within 60 days after the date of the receipt of the petition, any of the petitioners may bring a cause of action in district court to request that the area be disannexed. TEX. LOC. GOV'T CODE §43.141(b). The district court must enter an order disannexing the area if the court finds that a valid petition was filed with the city and that the city failed to perform its obligations in accordance with the service plan, written agreement, or resolution, or failed to perform in good faith.

If the area is disannexed it may not be annexed again within 10 years after the date of the disannexation.

2. Home Rule Disannexation According to Charter

Under §43.142, a home rule city may disannex an area according to rules provided by its charter and not inconsistent with state law. The section is permissive and does not mandate disannexation in most cases. The case of *City of Hitchcock v. Longmire*, 572 S.W.2d 122 (Tex. App.—Houston [1st Dist.] 1978, writ ref'd n.r.e.) concluded that initiative and referendum under a home rule charter are not implicated by §43.142, and may not be used to disannex property from a city.³³

3. General Law Disannexation

According to §43.143 of the Local Government Code, a general law city may disannex populated areas by petition and election.

To initiate the process, at least 50 qualified voters of an area located in a city sign and present a petition describing the area by metes and bounds to the mayor. If the petition requests that the area no longer be part of the city, the mayor must order an election on the question to be held on the first uniform election date that occurs after the date on which the petition is filed and that affords enough time to hold the election in the manner required by law. TEX. LOC. GOV'T CODE §43.143(a).

If the vote is for disannexation, the mayor must declare that the area is no longer a part of the city and enter an order to that effect in the minutes or records of the governing body.

³³ See also [*Vara v. City of Houston*, 583 S.W.2d 935, 938 \(Tex.Civ.App.1979, writ ref'd n.r.e.\)](#), appeal dismissed, [449 U.S. 807, 101 S.Ct. 54, 66 L.Ed.2d 11 \(1980\)](#) (“We conclude that articles 1175 and 970a have withdrawn the subject matter of this ordinance, disannexation, from the field in which the initiatory process is operative.”); *Save Our Aquifer v. City of San Antonio*, 237 F.Supp.2d 721 (W.D.Tex. 2002) (“[T]here is no right existing in people to repeal

annexation ordinance through referendum process; power to fix boundary limits was given to Texas municipalities pursuant to state annexation laws.”); *Ryan Services, Inc. v. Spennath*, Not Reported in S.W.3d, 2008 WL 3971667 (Tex.App.—Corpus Christi 2008)(concluding after a long battle that referenda do not apply to annexations).

However, the area may not be discontinued as part of the city if the discontinuation would result in the city having less area than one square mile or one mile in diameter around the center of the original boundaries. *Id.* at §43.143(b). If an area withdraws from a city, the area is not released from its pro rata share of city indebtedness at the time of the withdrawal.³⁴ *Id.* at §43.143(c).

Section 43.144 allows the disannexation of sparsely populated area by a general law city by ordinance upon a vote of the governing body if:

- (1) the area consists of at least 10 acres contiguous to the city; and
- (2) the area:
 - (A) is uninhabited; or
 - (B) contains fewer than one occupied residence or business structure for every two acres and fewer than three occupied residences or business structures on any one acre.

On adoption of the ordinance, the mayor enters in the minutes or records of the governing body an order discontinuing the area, and the area ceases to be a part of the city.

If a requested or desired disannexation for a general law city does not fit within either of the above provisions, it is prohibited.

4. Refund of Taxes and Fees

According to §43.148, if an area is disannexed, the city must refund to the landowners the amount of money collected in property taxes and fees during the period that the area was a part of the city less the amount of money that the city spent for the direct benefit of the area during that period.

The city is required to proportionately refund the amount to the landowners according to a method to be developed by the city that identifies each landowner's approximate pro rata payment of the taxes and fees being refunded, and the money must be refunded not later than 180 days after the area is disannexed.

³⁴In addition, the governing body shall continue to levy a property tax each year on the property in the area at the same rate that is levied on other property in the city until the taxes collected from the area equal its pro rata share of the indebtedness. Those taxes may be charged only with the cost of levying and collecting

the taxes, and the taxes shall be applied exclusively to the payment of the pro rata share of the indebtedness. This subsection does not prevent the inhabitants of the area from paying in full at any time their pro rata share of the indebtedness.

F. Special Districts/Water Supply Corporations

The annexation of an area that lies within the boundaries of certain types of special districts or water supply corporations may have a unique set of rules that apply, especially regarding provision of services. The rules that govern the annexation of special districts are generally located in Subchapter D of Chapter 43 of the Local Government Code. Any city that seeks to annex area that lies in a special district should pay special attention to those provisions. Rural water supply corporations may have certificated service areas that are protected from encroachment by federal law. Any city that seeks to annex either type of area should consult with local legal counsel regarding the pitfalls associated with that type of annexation. H.B. 347 should have no effect on strategic partnerships executed under the subchapter. Those agreements remain in force and subsequent annexations will be governed by the agreement's terms.

G. Emergency Services Districts

As cities annex new land, questions arise about the application of local sales taxes in the newly annexed territory. If the land was previously part of an emergency service district (ESD) that imposed a sales tax and, upon annexation, will be served by city first responders, who should get the sales taxes when there isn't enough room under the two-cent cap for both? The usual rule regarding priority of local sales taxes—first-come-first-served—tends not to work well in these circumstances. Some cities question, for example, why some other entity should get to provide emergency services on the citizens' tax dollar when a city is perfectly situated to do so itself.

Legislation passed in 2007, S.B. 1502 by Zaffirini, allows an ESD to “carve out” portions of the district that are already at the two-cent cap, thus permitting the district to impose the tax in non-capped portions of the ESD. As a result of this bill, cities have experienced an increased number of new ESD sales taxes in their ETJ (prior to the bill, an ESD couldn't pass a sales tax unless the entire district was eligible under the two-cent cap).

In 2013, legislation was filed and passed that represents a step in the right direction for cities on this issue. H.B. 3159 by Isaac authorizes a city that annexes territory served by an ESD (but does not provide emergency services in the newly-annexed area) to enter into an agreement with the ESD to divide the sales tax revenue in the newly-annexed area in an amount acceptable to both entities. The bill is not perfect, since an ESD could still refuse to negotiate such an agreement with the city and therefore limit the city sales taxes to be collected in the newly annexed territory. However, some cities have already utilized this new authority to collect a higher percentage of sales taxes than it otherwise would have received without an agreement.

In any case, if a city removes territory from an ESD, it must provide notice to the ESD to complete the removal.³⁵

Any city that seeks to annex either type of area should consult with local legal counsel regarding the pitfalls associated with that type of annexation.

H. Industrial Districts

Senate Bill 6 (2017) added the following provision that governs any annexation of an area subject to an industrial district agreement under Local Government Code Section 42.044:

Sec. 43.0116. AUTHORITY OF MUNICIPALITY TO ANNEX INDUSTRIAL DISTRICTS.

(a) Notwithstanding any other law and subject to Subsection (b), a municipality may annex all or part of the area located in an industrial district designated by the governing body of the municipality under Section 42.044 under the requirements applicable to a tier 1 municipality.

(b) A municipality that proposes to annex an area located in an industrial district subject to a contract described by Section 42.044(c) may initiate the annexation only: (1) on or after the date the contract expires, including any period renewing or extending the contract; or (2) as provided by the contract.

That provision was left untouched by H.B. 347 in 2019.

I. Military Bases

Senate Bill 6 (2017) added the following provision that governs any annexation of an area near a military base:

Sec. 43.0117. AUTHORITY OF MUNICIPALITY TO ANNEX AREA NEAR MILITARY BASE.

(a) In this section, "military base" means a presently functioning federally owned or operated military installation or facility.

³⁵ TEX. HEALTH AND SAFETY CODE Sec. 775.022(a) provides that "[i]f a municipality completes all other procedures necessary to annex territory in a district and if the municipality intends to remove the territory from the district and be the sole provider of emergency services to the territory by the use of municipal personnel or by some method other than by use of the district, the municipality shall send written notice of those facts to the board. The municipality must send the notice to the secretary of the board by certified mail, return receipt requested. The territory remains

part of the district and does not become part of the municipality until the secretary of the board receives the notice. On receipt of the notice, the board shall immediately change its records to show that the territory has been disannexed from the district and shall cease to provide further services to the residents of that territory. This subsection does not require a municipality to remove from a district territory the municipality has annexed."

(b) A municipality may annex for full or limited purposes, under the annexation provisions applicable to that municipality under this chapter, any part of the area located within five miles of the boundary of a military base in which an active training program is conducted. The annexation proposition shall be stated to allow the voters of the area to be annexed to choose between either annexation or providing the municipality with the authority to adopt and enforce an ordinance regulating the land use in the area in the manner recommended by the most recent joint land use study.

San Antonio used this provision in 2018 to seek to apply land use regulations in the areas around its bases.³⁶

J. Strategic Partnership Agreements

Senate Bill 6 (2017) added the following subsection to Section 43.0751 governing strategic partnership agreements and that allows annexation of an area subject to a SPA:

(a) Notwithstanding any other law, the procedures prescribed by Subchapters C-3, C-4, and C-5 do not apply to the annexation of an area under this section. Except as provided by Subsection (h), a municipality shall follow the procedures established under the strategic partnership agreement for full-purpose annexation of an area under this section.

The bill also included a “gotcha” in the form of Section 43.9051(c), which provides that a city “that proposes to enter into a strategic partnership agreement under Section 43.0751 shall provide written notice of the proposed agreement within the period prescribed for providing the notice of the first hearing under Section 43.0751 to each political subdivision that is in or provides services to the area subject to the proposed agreement.”

³⁶ See Tex. Att’y Gen. Op. KP-0221 (2018).