

Municipal Law through the Years: A Historical Perspective

*By Larry Schenk and Don Cheatham, Former Assistant City Attorneys,
Houston*

“Return with us now to those thrilling days of yesteryear.....”

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Introduction

A. Municipal annexation and state law changes over the years.

1. Rust belt cities. -----

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2. How Texas law was designed to avoid it; Article 970a (the Municipal
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I. Closing comments

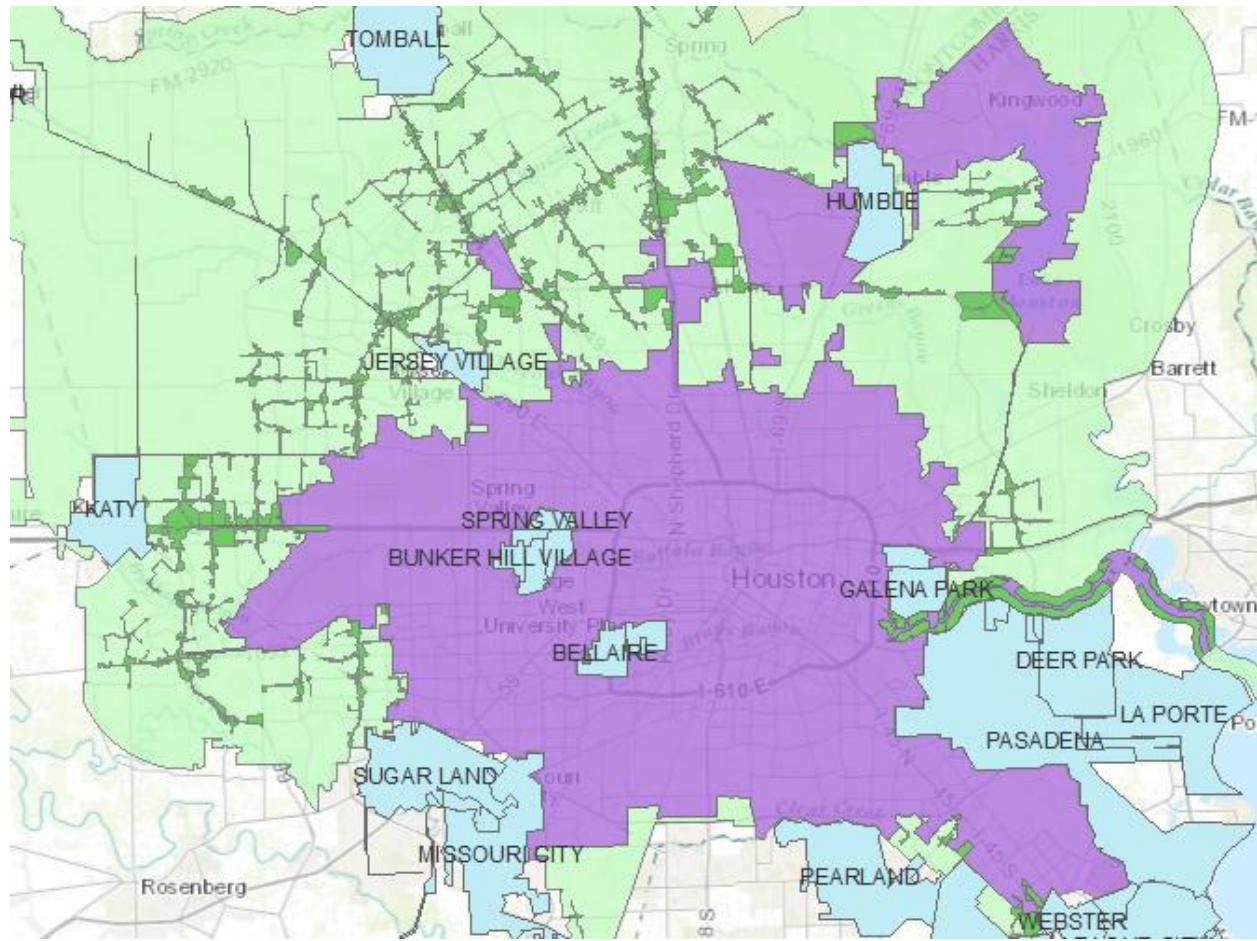


Figure 1. Greater Houston and Surrounding Areas, Courtesy of City of Houston
(<http://mycity.maps.arcgis.com/home/webmap/viewer.html?webmap=d23bbfdc95a04e569ff1102858a92f1a>)



Figure 2. Comparison of Houston Land Area to That of Other Major U.S. Cities

Art. 970a. Municipal Annexation Act

Short title

Section 1. This Act is known and may be cited as the "Municipal Annexation Act."

Definitions

Sec. 2. For the purposes of this Article, the following words shall have the meanings ascribed to them:

A. "City" or "Cities" means any incorporated city, town or village in the State of Texas.

B. "Voters" means those persons qualified to vote under the laws of the State of Texas.

C. "Written consent" means consent expressed by an ordinance or resolution.

Establishing extraterritorial jurisdiction

Sec. 3. A. In order to promote and protect the general health, safety, and welfare of persons residing within and adjacent to the cities of this State, the Legislature of the State of Texas declares it to be the policy of the State of Texas that the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of any city, to the extent described herein, shall comprise and be known as the extraterritorial jurisdiction of the various population classes of cities in the State and shall be as follows:

(1) The extraterritorial jurisdiction of any city having a population of less than five thousand (5,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within one half ($\frac{1}{2}$) mile of the corporate limits of such city.

(2) The extraterritorial jurisdiction of any city having a population of five thousand (5,000) or more inhabitants, but less than twenty-five thousand (25,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within one (1) mile of the corporate limits of such city.

(3) The extraterritorial jurisdiction of any city having a population of twenty-five thousand (25,000) or more inhabitants, but less than fifty thousand (50,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within two (2) miles of the corporate limits of such city.

(4) The extraterritorial jurisdiction of any city having a population of fifty thousand (50,000) or more inhabitants, but less than one hundred thousand (100,000) inhabitants shall consist of all the contiguous unincorporated area, not a part of any other city, within three and one half ($3\frac{1}{2}$) miles of the corporate limits of such city.

(5) The extraterritorial jurisdiction of any city having a population of one hundred thousand (100,000) or more inhabitants shall con-

sist of all the contiguous unincorporated area, not a part of any other city, within five (5) miles of the corporate limits of such city.

B. In the event that on the effective date of this Act the area under the extraterritorial jurisdiction of a city overlaps an area under the extraterritorial jurisdiction of one or more other cities, such overlapped area may be apportioned by mutual agreement of the governing bodies of the cities concerned. Such agreement shall be in writing and shall be approved by an ordinance or resolution adopted by such governing bodies.

At any time after one hundred and eighty (180) days from the effective date of this Act, any city having an extraterritorial claim to such overlapping area shall have authority to file a plaintiff's petition in the district court of a judicial district, within which is located the largest city having an extraterritorial claim to such overlapped area, naming as parties defendant all cities having a claim to such overlapped area and praying that such overlapped area, to which it has mutual claim, be apportioned among the cities concerned. In effecting such apportionment, the district court shall consider the population densities and patterns of growth, transportation, topography, and land utilization in the cities concerned and in the overlapped area. The territory so apportioned to a city shall be contiguous to the extraterritorial jurisdiction of such city. In the event the extraterritorial jurisdiction of a city is totally overlapped, the territory so apportioned to such city shall be contiguous to the corporate boundaries of such city. Such territory so apportioned shall be in a substantially compact shape. Such overlapped area shall be apportioned among such cities in the same ratio (to one decimal) as the respective populations of the cities concerned bear to one another, but in such apportionment no city shall receive less than one-tenth (1/10) of such overlapping area. Provided, however, that any apportionment made under the provisions of this Subsection shall give consideration to existing property lines, and no tract of land or adjoining tracts of land, under one ownership upon the effective date of this Act and not exceeding one hundred and sixty (160) acres in size shall be apportioned so as to be within the extraterritorial jurisdiction of more than one city unless the landowner consents in writing to such apportionment.

C. When a city annexes additional territory, the extraterritorial jurisdiction of such city shall expand in conformity with such annexation and shall comprise an area around the new corporate limits of the city consistent with Subsection A of this Section. In addition, the extraterritorial jurisdiction of the city may be extended beyond the distance limitations imposed by Subsection A of this Section to include therein any territory contiguous to the otherwise existing extraterritorial jurisdiction of such city, provided the owner or owners of such contiguous territory request such expansion. However, in no event shall the expansion of the extraterritorial jurisdiction of a city,

through annexation, or upon request, or because of increase in population of the city, conflict with the existing extraterritorial jurisdiction of another city. The extraterritorial jurisdiction of a city shall not be reduced without the written consent of the governing body of such city, except in cases of judicial apportionment of overlapping extraterritorial jurisdictions.

D. No city shall impose any tax in the area under the extraterritorial jurisdiction of such city, by reason of including such area within such extraterritorial jurisdiction.

Extension of subdivision ordinance within the extraterritorial jurisdiction

Sec. 4. The governing body of any city may extend by ordinance to all of the area under its extraterritorial jurisdiction the application of such city's ordinance establishing rules and regulations governing plats and the subdivision of land; provided, that any violation of any provision of any such ordinance outside the corporate limits of the city, but within such city's extraterritorial jurisdiction, shall not constitute a misdemeanor under such ordinance nor shall any fine provided for in such ordinance be applicable to a violation within such extraterritorial jurisdiction. However, any city which extends the application of its ordinance establishing rules and regulations governing plats and the subdivision of land to the area under its extraterritorial jurisdiction shall have the right to institute an action in the district court to enjoin the violation of any provision of such ordinance in such extraterritorial jurisdiction, and the district court shall have the power to grant any or all types of injunctive relief in such cases.

Industrial districts

Sec. 5. The governing body of any city shall have the right, power, and authority to designate any part of the area located in its extraterritorial jurisdiction as an industrial district, as the term is customarily used, and to treat with such area from time to time as such governing body may deem to be in the best interest of the city. Included in such rights and powers of the governing body of any city is the permissive right and power to enter into contracts or agreements with the owner or owners of land in such industrial district to guarantee the continuation of the extraterritorial status of such district, and its immunity from annexation by the city for a period of time not to exceed seven (7) years, and upon such other terms and considerations as the parties might deem appropriate. Such contracts or agreements shall be evidenced in writing and may be renewed or extended for successive periods not to exceed seven (7) years each by such governing body and the owner or owners of land in such industrial district. Existing contracts or agreements of such nature, recognized in or evidenced by an ordinance or resolution of the governing body of the contracting town or city, are hereby in all respects validated as of the date they were made, for the extent of their term or for seven (7) years from the date made, whichever is shorter.

Notice and hearing—annexation proceedings

Sec. 6. Before any city may institute annexation proceedings, the governing body of such city shall provide an opportunity for all interested persons to be heard at a public hearing to be held not more than twenty (20) days nor less than ten (10) days prior to institution of such proceedings. Notice of such hearing shall be published in a newspaper having general circulation in the city and in the territory proposed to be annexed. The notice shall be published at least once in such newspaper not more than twenty (20) days nor less than ten (10) days prior to the hearing. Annexation of territory by a city shall be brought to completion within ninety (90) days of the date on which the governing body of such city institutes annexation proceedings or be null and void. Provided, however, any period of time during which a city is restrained or enjoined from annexing any such territory by a court of competent jurisdiction shall not be computed in such ninety (90) day limitation period.

Limitation on annexations

Sec. 7. A. A city may annex territory only within the confines of its extraterritorial jurisdiction; provided, however, that such limitation shall not apply to the annexation of property owned by the city annexing the same.

B. A city may annex in any one calendar year only territory equivalent in size to ten per cent (10%) of the total corporate area of such city as of the first day of that calendar year. In computing the total amount of territory which may be annexed in any one (1) calendar year, there shall be excluded from such ten per cent (10%) the following: (1) territory caused to be annexed by a request of a majority of the qualified resident voters in the territory and the owners of fifty per cent (50%) or more of the land in the territory, (2) territory annexed which is owned by the city, the county, the State, or the Federal Government which is used for a public purpose, (3) territory annexed at the request of a majority of the voters residing in such territory, and (4) territory annexed at the request of the owner or owners thereof.

C. In the event a city fails in any calendar year or years to annex the total amount of territory which it is authorized to annex in such calendar year or years, such unused allocation may be carried over and used in subsequent calendar years. A city, utilizing the power granted under this Subsection, may not annex in any one calendar year an amount of territory in excess of thirty per cent (30%) of its total area as of the first day of the calendar year.

D. All annexation proceedings by cities which are pending on or instituted after March 15, 1963, shall be subject to the limitations as to size and extent of area imposed by this Act and shall be brought to completion within ninety (90) days after the effective date of this

Act or be null and void. Provided, however, any period of time during which a city is enjoined or restrained from completing such annexation proceedings by a court of competent jurisdiction shall not be computed in such ninety (90) day limitation period.

E. No annexation shall change or have any effect on switching limits of railroads or any rates thereof.

Limitations on creation of political subdivisions within
the extraterritorial jurisdiction

Sec. 8. A. No city may be incorporated within the area of the extraterritorial jurisdiction of any city without the written consent of the governing body of such city. Should such governing body refuse to grant permission for the incorporation of such proposed city, a majority of the resident voters, if any, in the territory of such proposed city and the owners of fifty per cent (50%) or more of the land in such proposed city may petition the governing body of such city and request annexation by such city. Should the governing body of such city fail or refuse to annex the area of such proposed city within six (6) months from the date of receipt of such petition, proof of such failure or refusal shall constitute authorization for the incorporation of such proposed city insofar as the purposes of this Subsection are concerned. Written consent or authorization for the incorporation of a proposed city, insofar as the provisions of this Subsection are concerned, shall mean only authorization to initiate incorporation proceedings for such proposed city as otherwise provided by law. The provisions of this Subsection shall apply only to the area of a proposed city which lies within the extraterritorial jurisdiction of such city.

B. No political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial uses or the furnishing of sanitary sewer services may be created within the area of the extraterritorial jurisdiction of any city without the written consent of such city. Should the governing body of such city fail or refuse to grant permission for the creation of such proposed political subdivision within sixty (60) days after receipt of a written request for same, a majority of the qualified resident voters in the territory of such proposed political subdivision and the owner or owners of fifty per cent (50%) or more of the land in such proposed political subdivision may petition the governing body of such city and request such city to make available to such territory the water or sanitary sewer service contemplated by the proposed political subdivision. Should the governing body of the city and a majority of the qualified resident voters and the owner or owners of fifty per cent (50%) or more of the land in such proposed political subdivision fail to execute a mutually agreeable contract providing for the water or sanitary sewer service requested within six (6) months after receipt of such petition, such failure shall constitute authorization for the creation of the proposed political subdivision insofar as the provisions of this Subsection are con-

cerned. Authorization for the creation of the proposed political subdivision, insofar as the provisions of this Subsection are concerned, shall mean only authorization to initiate proceedings to create such political subdivision as otherwise provided by law. The provisions of this Subsection shall apply only to the area of such proposed political subdivision which lies within the extraterritorial jurisdiction of such city.

This Subsection shall not apply to any such proposed political subdivision where a valid petition seeking its creation has been filed with the county clerk or other legally designated authority prior to the effective date of this Act.

C. If authorization to initiate incorporation proceedings for a proposed city is obtained under the provisions of Subsection A of this Section, such incorporation must be initiated within six (6) months of the date of such authorization and such incorporation must be finally completed within eighteen (18) months of the date of such authorization. Failure either to initiate such incorporation proceedings or to finally complete the incorporation of such proposed city within such allotted periods of time shall terminate such authorization. If authorization to initiate proceedings to create a proposed political subdivision having as one of its purposes the supplying of fresh water for domestic or commercial purposes or the furnishing of sanitary sewer services is obtained under the provisions of Subsection B of this Section, such proceedings seeking the creation of such a political subdivision must be initiated within six (6) months of the date of such authorization and such proposed political subdivision must be finally completed within eighteen (18) months of the date of such authorization. Failure either to initiate such proceedings seeking the creation of such political subdivision or to finally complete the creation of such proposed political subdivision within such allotted periods of time shall terminate such authorization.

Petition for annexation or services

Sec. 9. The petition for annexation provided for in Subsection A of Section 8 of this Article and the petition requesting the availability of services provided for in Subsection B of Section 8 of this Article shall be made by the voters and landowners signing and presenting to the city secretary or clerk a written petition requesting annexation or requesting such services. The signatures to the petition need not be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil, and each signer signing the petition as a voter shall sign his or her name as it appears on the official copy of the current poll list or an official copy of the current list of exempt voters and each voter shall note on such petition his or her residence address and the precinct number and serial number that appear on his or her poll tax receipt, exemption certificate, or such other voter registration certificate that may be provided for by law.

Each landowner signing the petition shall note thereon opposite his or her name the approximate total acreage he or she owns within the territory. The petition shall describe the territory to be annexed or the territory to which such services are requested to be made available and have attached to it a plat of the territory. Prior to circulating the petition for annexation or such services among the voters and landowners, notice of the petition shall be given by means of posting for ten (10) days a copy of the petition in three (3) public places in the territory and by publishing it for one (1) issue in a newspaper of general circulation serving the territory at least fifteen (15) days prior to the circulation of the petition. Proof of posting and publication of the notice shall be made by attaching to the petition presented to the city secretary or clerk: (1) the sworn affidavit of any voter who signed the petition, stating the places where and the dates when the petition was posted; and (2) the sworn affidavit of the publisher of the newspaper setting forth the name of the newspaper and the issue and date when the notice was published; (3) in addition, there shall be attached to the petition the sworn affidavit of three (3) or more voters signing the petition, if there be that many, stating the total number of voters residing in the territory and the approximate total acreage within the territory.

Disannexation

Sec. 10. A. From and after the effective date of this Act, any city annexing a particular area shall within three (3) years of the effective date of such annexation provide or cause to be provided such area with governmental and proprietary services, the standard and scope of which are substantially equivalent to the standard and scope of governmental and proprietary services furnished by such city in other areas of such city which have characteristics of topography, patterns of land utilization, and population density similar to that of the particular area annexed. In the event a city fails or refuses to provide or cause to be provided such services within the time specified herein, a majority of the qualified voters residing within such particular annexed area and the owners of fifty per cent (50%) or more of the land in such particular annexed area, which area must adjoin the outer boundaries of the city, may petition the governing body of such city to disannex such particular annexed area. Should the governing body of such city fail or refuse to disannex such particular annexed area within ninety (90) days after receipt of a valid petition, any one or more of the signers of such petition may, within sixty (60) days of the date of such failure or refusal, file in a district court of the district in which such city is located an action requesting that the particular annexed area be disannexed. Upon the filing of an answer in such cause by the governing body of such city, and upon application of either party, the case shall be advanced and heard without further delay, all in accordance with the Texas Rules of Civil Procedure. Upon

hearing of the case, if the district court finds that a valid petition was filed with the city, that the particular annexed area is otherwise eligible for disannexation under the provisions of this Section, and that the standard and scope of governmental and proprietary services provided or caused to be provided to such particular annexed area are not substantially equivalent to the standard and scope of governmental and proprietary services provided or caused to be provided other areas of such city having characteristics of topography, patterns of land utilization and population density similar to that of the particular annexed area, it shall enter an order disannexing such particular annexed area. Provided, however, that the right of disannexation provided for in this Section shall not be available to any particular annexed area which was lawfully within the city limits of a city at the time of the approval or sale of any general obligation bonds of the city if proceeds therefrom have been expended for capital improvements to serve such particular annexed area, so long as any such bonds are outstanding.

B. When any such area is disannexed under the provisions of this Section, it shall not again be annexed within one (1) year of such disannexation, and, if it is again annexed within three (3) years of disannexation, the period for affording such services as are required by this Section shall be one (1) year from reannexation rather than three (3) years as in other cases.

C. The request and petition for disannexation provided for in Subsection A of this Section of this Act shall be made by the qualified voters and landowners signing and presenting to the city secretary a written petition requesting disannexation. The signatures to the petition need not be appended to one paper, but each signer shall sign his or her name in ink or indelible pencil, and each signer signing the petition as a qualified voter shall sign his or her name as it appears on the official copy of the current poll list or an official copy of the current list of exempt voters and each qualified voter shall note on such petition his or her residence address and the precinct number and serial number that appear on his or her poll tax receipt, exemption certificate, or such other voter registration certificate that may be provided for by law. Each landowner signing the petition shall note thereon opposite his or her name the approximate total acreage he or she owns within the particular annexed area. The petition shall describe the particular annexed area to be disannexed and have attached to it a plat of the particular annexed area. Prior to circulating the petition for disannexation among the qualified voters and landowners, notice of the petition shall be given by means of posting for ten (10) days a copy of the petition in three (3) public places in the particular annexed area and by publishing it for one (1) issue in a newspaper or newspapers of general circulation serving the particular annexed area at least fifteen (15) days prior to the circulation of

the petition. Proof of posting and publication of the notice shall be made by attaching to the petition presented to the city secretary: (1) the sworn affidavit of any qualified voter who signed the petition stating the places where and the dates when the petition was posted, and (2) the sworn affidavit of the publisher of the newspaper or newspapers setting forth the name of the newspaper or newspapers and the issue and date in which the notice was published. In addition, there shall be attached to the petition the sworn affidavit of three (3) or more qualified voters signing the petition, if there be that many, stating the total number of qualified voters residing in the particular annexed area and the approximate total acreage within such particular annexed area. Acts 1963, 58th Leg., p. 447, ch. 160, art. I.

Library references: Municipal Corporations §26 et seq.; C.J.S. Municipal Corporations § 41 et seq.

Historical Note

Acts 1963, 58th Leg., p. 447, ch. 160, art. II, amended article 1175. Article III of the Act, a cumulative clause, provided: "The provisions of this Act shall not repeal Chapter 231, Acts of the Fortieth Legislature, Regular Session, 1927, as last amended or any other law or part of law upon the subject of which the provisions of this Act relate unless they are expressly incon-

sistent and then only to the extent of such inconsistency. It is expressly provided that this Act shall not repeal or affect Article 1183 to Article 1187, both inclusive, Revised Civil Statutes of Texas, 1925, nor apply to any territories held by any city or town under the provisions of said Articles or the laws of which said Articles were a codification."

Cross References

Cities on navigable streams, extension of limits, see art. 1183.
Home rule cities, exchange of territory with other cities, see art. 1175, subd. 2.
Platting and recording subdivisions or additions, see art. 974a.

Art. 971. [777] Territorial boundaries

No city or town in this State shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in this title with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. The mayor and board of aldermen, immediately after they qualify as such officers, shall pass an ordinance causing an actual survey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation and the field notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such city or town is situated. Acts 1895, p. 17; G.L. vol. 10, p. 747.

Cross References

Municipal Annexation Act, see art. 970a.
Towns and villages, mode of incorporation of, map or plat showing boundaries, etc., see art. 1134.