

ANNEXATION AND DISANNEXATION

LAND USE LAW CONFERENCE

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INTRODUCTION: The growth of urban and rural areas often results in land use problems for local government and property owners/developers. As population increases and the demand for governmental services increases, municipalities are forced to expand and annex (absorb) adjacent territory to regulate development and increase tax revenue. Annexation can raise various land use and other related issues during the process. Annexation can be a complex process involving competing land use issues and resulting in litigation by a variety of parties. Annexation is accomplished by ordinance after notice and public hearings. Issues include:

- (1) Whether there is jurisdiction or authority to annex the territory;
- (2) Whether the statutory procedure has been followed;
- (3) The status of non-conforming uses and structures;
- (4) The application of new zoning and development regulations;
- (5) Assumption of liability of debt and imposition of taxes;
- (6) Providing governmental services and service plans;
- (7) The existence of extraterritorial jurisdiction (ETJ);
- (8) Location of existing municipal boundaries and ETJ;
- (9) Relationships with adjoining and/or competing municipalities;
- (10) The differences between a Home-Rule City and a General Law City;
- (11) Voting Rights Act, 42 U.S.C. § 1973c;
- (12) Extension of subdivisions regulations to ETJ;
- (13) Wet/dry status of the annexed territory for the sale of alcohol;
- (14) Impact Fees;
- (15) Disannexation and Re-annexation;
- (16) Industrial District Agreements.

ANNEXATION PRIOR TO 1963

Prior to the adoption of the Municipal Annexation Act, Article 970a TEX. R. CIV. STAT., a municipality could annex territory up to the City limits of another municipality. An area could be incorporated right up to the City limits of an existing City. The Courts followed the "first in time - first in right" rule that the first to commence annexation or incorporation proceedings was entitled to complete the proceedings and relate the entire action back to the date of commencement. As a result, contests occurred between areas attempting to incorporate and municipalities trying to annex areas.

In 1963, the Texas Legislature recognized these annexation problems and adopted the Municipal Annexation Act, Article 970a, TEX. R. CIV. STAT., now codified in the Local Government Code at Chapter 42, Extraterritorial Jurisdiction of Municipalities and Chapter 43, Municipal Annexation. The Act, inter alia, created the concept of extraterritorial jurisdiction (ETJ), an imaginary area of the unincorporated territory contiguous to the municipal limits and extending for distances ranging from one-half (½) mile to five (5) miles, based on population. The authority to annex differs between Home-Rule Cities and General Law Cities.

HOME-RULE CITY VERSUS GENERAL LAW CITY

The Texas Constitution divides municipalities into two classes, General Law and Home-Rule. A Home-Rule City has full power of self government derived from the Texas Constitution and looks to the acts of the legislature not for grants of power, but only for limitations on its powers. *City of Dallas v Dallas Merchants & Concessionaires Assn*, 823 S.W.2d 347 (Tex.App.--Dallas 1991); TEX. CONST. ART XI § 5. A municipality of a population of at least five thousand (5,000) which has adopted a home-rule charter is a Home-Rule City. A General Law City must look to the general law for authority to act and may only exercise those powers specifically granted to it by the Texas Constitution and the Texas Statutes. Most incorporated cities are General Law Cities and are classified as Type A, Type B and Type C. See, TEX. LOC. GOV'T CODE § 5.001-5.003. The distinction between a Home-Rule City and a General Law City is significant because of the extent of annexation authority.

Home-Rule Cities are subject to the Act but may annex territory with or without the consent of the residents if their Charters so provide. Home-Rule Cities have the power to extend their boundaries and to annex adjacent territory without the consent of the residents of the territory, Additionally, Home-Rule Cities can exchange or adjust boundaries with other municipalities. See, TEX. LOC. GOV'T CODE. §43.021

In most cases, General Law Cities, on the other hand, are limited to voluntary annexation. General Law Cities may only annex adjacent territory with the consent of the property owner, if the land is occupied by less than three (3) qualified voters, or the consent of a majority of qualified voters inhabiting an occupied annexed area, if the land is occupied by three (3) or more qualified voters. See, TEX. LOC. GOV'T CODE §§ 43.024, 43.025 and 43.028; *City of Northlake v East Justin*, 873 S.W.2d 413 (Tex.App.--Fort Worth 1994, writ denied); *Sitton v City of Lindale*, 455 S.W.2d 939 (Tex. 1970). A General Law City may annex without the consent of any of the residents or voters of the area if the City's population exceeds one thousand (1,000) but not five thousand (5,000) and is serving the area with city water or sewer service. See, TEX. LOC. GOV'T CODE §43.033.

There are other limited provisions for annexation by General Law Cities upon petitions or affidavits of voters or property owners. Section 43.023 provides for annexation by a General Law City with a population of five thousand (5,000) upon petition of one hundred (100) inhabitants. Section 43.024 provides for annexation by a Type A City upon public vote and affidavit to the Mayor. Section 43.025 provides for annexation by a Type B City upon public vote and affidavits subject to the square mile limitations for incorporation set forth in § 5.901. Section 43.026 provides for annexation by a Type A City of city owned property. Section 43.027 provides for annexation by a General Law City of navigable streams. Section 43.028 provides for the annexation of vacant territory upon the petition of the landowners.

EXTRATERRITORIAL JURISDICTION (ETJ)

A City may only annex territory within its ETJ. § 43.051, TEX. LOC. GOV'T CODE. Any attempt to annex territory within the ETJ of another city without that City's consent is void. See, *City of Waco v City of McGregor*, 523 S.W.2d 649, 653 (Tex. 1975); *Village of Creedmoor*, 808 S.W.2d at 620; *City of Bridge City v State ex rel City of Port Arthur*, 792 S.W.2d 217 (Tex.App.--Beaumont 1990); *Friendship Village v State*, 738 S.W.2d 12, 14 (Tex.App.--Texarkana 1987, writ ref'd n.r.e.); *City of Houston v Savely*, 708 S.W.2d 879, 887 (Tex.App.--Houston [1st Distr.] 1986, writ ref'd n.r.e.) cert. denied 482 U.S. 928 (1987); *City of West Orange v State ex rel City of Orange*, 598 S.W.2d 387, 390

(Tex.Civ.App.--Beaumont 1980), *rev'd on other grounds*, 613 S.W.2d 236 (Tex. 1981); *City of Duncanville v City of Woodland Hills*, 484 S.W.2d 111, 113 (Tex.Civ.App.--Waco 1972, writ ref'd n.r.e.). TEX. LOC. GOV'T CODE ANN. § 42.023 requires the written consent of the governing body of a municipality before its extraterritorial jurisdiction may be annexed. *See also, City of Murphy*, 932 S.W.2d at 479.

The unincorporated area, not a part of any other City or its ETJ, that is contiguous to the corporate limits of any City, comprises the "extraterritorial limits" of the City. Under TEX. LOC. GOV'T CODE ANN. § 42.021, the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

- a. within one-half (½) mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;
- b. within one (1) mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;
- c. within two (2) miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;
- d. within three and one-half (3½) mile of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or
- e. within five (5) miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

CONTIGUITY: The territory to be annexed must be contiguous to the current city limits. The term adjacency and contiguity are used interchangeably. The ETJ of a city is contiguous to the City limits and extending out to the up to five miles. § 42.021 TEX. LOC. GOV'T CODE. A city generally may only annex territory within its ETJ and must annex adjacent or contiguous land § 43.021 TEX. LOC. GOV'T CODE (Home Rule City annex adjacent area); § 43.024 TEX. LOC. GOV'T CODE (Type A City annex contiguous area); § 43.033 TEX. LOC. GOV'T CODE (General Law City exceeding 1,000 population to annex adjacent territory). The term adjacent has no specific meaning. Courts have held that adjacent means neighboring or close by or in the vicinity of and not necessarily touching upon. *Pasadena v State*, 442 S.W.2d 325 (Tex. 1969). Although the annexed territory need not adjoin the city limits, it must be contiguous to or in the vicinity of the annexing city and there must be some connection to the City. *City of Westlake Hills v State*, 466 S.W.2d 722 (Tex. 1971); *Houston v Savely*, 708 S.W.2d 879 (Tex.App.--Houston [1st Dist.] 1986, writ ref'd n.r.e.).

ETJ MAY BE EXPANDED: TEX. LOC. GOV'T CODE § 42.022 provides when a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to include the area around the new municipal boundaries within the distance limitations of § 42.021. Also the extraterritorial jurisdiction of a municipality may expand beyond the distance limitations imposed by § 42.021 if the owners of the area request the expansion. *See, City of Murphy v City of Parker*, 932 S.W.2d 479 (Tex. 1996).

OVERLAPPING ETJ: TEX. LOC. GOV'T CODE § 42.901 addresses overlapping ETJs created as a result of the 1963 Municipal Annexation Act by permitting cities to apportion ETJs that overlap as of 1963 by either written agreement, or by an apportionment suit in district court. After the initial apportionment, municipalities should not face overlapping ETJs because the expansion of the extraterritorial jurisdiction of a municipality through annexation, request, or increase in the number of inhabitants may not include any area in the existing extraterritorial jurisdiction of another

municipality. See, TEX. LOC. GOV'T CODE §42.022. *Village of Creedmoor v Frost Nat'l Bank*, 808 S.W.2d 617, 621 (Tex.App.--Austin 1991, writ denied) (attempted annexation of land within another municipality's ETJ is void). Notwithstanding such statutory limitations municipalities continue to compete and litigate over the annexation of ETJ.

WIDTH AND PERCENTAGE AREA RESTRICTIONS

A municipality may not annex a publicly or privately owned area, including a strip of area following the course of a road, highway, river, stream, or creek, unless the width of the area at its narrowest point is at least one thousand feet (1,000'). § 43.054, TEX. LOC. GOV'T CODE. However, strip annexation is permitted when: (1) the boundaries of the municipality are contiguous to the area on at least two sides; (2) annexation is initiated on written petition of owners or a majority of the qualified voters of the area; or (3) the area abuts or is contiguous to another jurisdictional boundary. *Id.*

A municipality may not annex an area greater than ten percent (10%) of its incorporated area as of January 1 of that year plus any unused allocation from prior years up to a maximum of thirty percent (30%) of the incorporated area as of January 1 of that year. § 43.055, TEX. LOC. GOV'T CODE; *City of Grand Prairie v Turner*, 515 S.W.2d 19 (Tex.App.--Dallas, 1974, writ ref'd n.r.e.). The ten percent (10%) limitation does not apply to a general law city, annexation of city reservoirs or the annexation by any city of its airport. §43.101 and §43.102, TEX. LOC. GOV'T CODE.

PROCEDURE FOR ANNEXATION

The procedure for annexation is a detailed process including notice and public hearings which must be strictly followed for the validity of the annexation ordinance. § 43.052, TEX. LOC. GOV'T CODE; *Fuller Springs v State ex rel City of Lufkin*, 513 S.W.2d 17 (Tex. 1974); *City of Duncanville v City of Woodland Hills*, 489 S.W.2d 557 (Tex. 1972) *per curiam*, *overruled on other grounds* 825 S.W.2d 434 (Tex. 1991).

The annexation procedure can be summarized as:

1. Petition or request by landowners or residents
2. Notice of public hearing by publication - published ten (10) - twenty (20) days prior to the first public hearing date.
3. Public hearing before city council providing opportunity for interested persons to be heard.
4. Notice by publication of second public hearing ten (10) - twenty (20) days prior to second public hearing date.
5. Second public hearing before City Council twenty (20) - forty (40) days prior to the first reading of the annexation ordinance.
6. Approval and first reading of the annexation ordinance by the City Council.
7. Second reading by City Council (if required by charter) and passage of ordinance.

PUBLIC HEARINGS: Before a municipality may institute annexation proceedings, the City Council must conduct two public hearings at which interested persons are provided an opportunity to be heard. The hearings must be conducted on or after the fortieth (40th) day but before the twentieth (20th) day before the date of institution of the proceedings. At least one public hearing shall be held within the affected area if, within ten (10) days after the publication of notice of the public hearing more than

twenty (20) adult residents of the territory protest in writing to the City Secretary. § 43.052(b). Each written protest must contain the name, address and age of each protestor signing. The public hearings may be conducted on the same day.

NOTICE: The municipality must publish notice of the public hearings in a newspaper of general circulation in the City and the territory proposed to be annexed for each hearing at least once on or after the twentieth (20th) date but before the tenth (10th) day before the hearing. A single publication of both public hearings is permissible if time period permits.

ANNEXATION NOTICE AND HEARING SCHEDULE

§43.052 TEX. LOC. GOV'T CODE

Publication of Notice - Both Hearings	Date of First Public Hearing	Second Public Hearing	Institution of Proceedings (Date to Pass Ord. on 1st Reading, if Multiple Readings Required by Charter) otherwise date pass Ord.)
Must be more than 10 & less than 21 days.	Can be same day	Not more than 40 or less than 20 days	
Must be more than 10 & less than 21 days			
Not more than 40 or less than 20 days.			

COMPLETION OF THE PROCEEDINGS: Annexation must be completed within ninety (90) days of the date on which the governing body of the City institutes annexation proceedings or it is void. §43.053, TEX. LOC. GOV'T CODE. The introduction and passage of the annexation ordinance on its first reading is the date annexation proceedings are instituted for purpose of determining compliance with §43.053, TEX. LOC. GOV'T CODE. See, *Fuller Springs*, 513 S.W.2d at 17; *City of Duncanville*, 489 S.W.2d at 557; *City of Houston*, 708 S.W.2d at 887.

GENERAL LAW CITIES: For a General Law City there are additional requirements: Petition for annexation by at least three (3) registered voters in the proposed area of annexation or if the land has fewer than three (3) voters, the landowner can file a petition. See, § 43.024 and § 43.028. A general law city may also order an election to be held within an area seeking annexation triggered by a petition requesting annexation signed by one hundred (100) residents or by a majority of the qualified voters in the area. §43.023.

HOME RULE CITY: A Home Rule City may have an election on the issue of annexation of territory if provided by charter. Where a charter prescribes a manner in which annexation is to be performed, the method must be followed for the ordinance to be valid so long as it is not inconsistent with the statutory procedure. *River Oaks v Lakeworth Village*, 231 S.W.2d 768 (Tex.App.--Fort Worth 1950, writ ref'd n.r.e.); *Miller v Mercedes*, 361 S.W.2d 464 (Tex.App.--Eastland 1962, writ ref'd n.r.e.).

LEGAL DESCRIPTIONS: The legal description is not required to have the same particularity as a deed. *Sate v Fort Worth*, 339 S.W.2d 707 (Tex.App.--Fort Worth 1960 writ ref'd n.r.e.). Since an annexation ordinance is a legislative act, a reasonable construction should be applied to the entire ordinance to give effect to the intent of the City Council adopting the same. Omitted calls however may not be added to an annexation ordinance even by construing the entire ordinance to give effect to the legislative intent. *City of Clute v City of Lake Jackson*, 599 S.W.2d 391 (Tex.App.--Houston 1977, writ ref'd n.r.e.); *City of Missouri v Senior*, 583 S.W.2d 444 (Tex.App.--Houston 1979, writ ref'd n.r.e.). An annexation ordinance containing a description which does not close is void. *City of Clute*, 599 S.W.2d at 391. The Texas Supreme Court holds that a legal description for incorporation or annexation which does not close voids that portion of the incorporation or annexation ordinance. *Westlake Hills*, 466 S.W.2d at 722.

On the other hand, an erroneous description which included areas which could not be annexed and inadequately described areas to be annexed was held adequate based on construction of the entire ordinance giving effect to the intent of City and on the basis that it was an irregular exercise of annexation authority. *City of Houston v Harris County Eastex Oaks Water and Sewer District*, 438 S.W.2d 941 (Tex.Civ.App.--Houston 1969, writ ref'd n.r.e.).

SERVICE PLANS: Municipalities must prepare and approve a service plan as a part of the annexation ordinance §43.056, TEX. LOC. GOV'T CODE. Prior to the publication of the required notice of an annexation hearing, the governing body must direct its planning department or other appropriate department to prepare a service plan that provides for the extension of services to the territory to be annexed § 43.056(a), TEX. LOC. GOV'T CODE.

The plan must include a program under which the municipality will provide full municipal services to the annexed territory no later than four and one-half (4½) years after the effective date of the annexation. *Id.* The plan must also include a program for the city to commence construction within two and one-half (2½) years and complete construction of any capital improvements necessary for providing municipal services adequate to serve the area within four and one-half (4½) years after the annexation. § 43.056(d), TEX. LOC. GOV'T CODE. The capital improvements however are not required

to be completed within four and one-half years (4½) years for the development projects in the annexed territory if the annexation was initiated by petition or request of the landowners who have so agreed. At a minimum, the plan must provide police protection, fire protection, solid waste collection, maintenance of water and waste water facilities, roads, parks and other publicly owned facilities within the annexed territory within sixty (60) days after the effective date of the ordinance. § 43.056(b), TEX. LOC. GOV'T CODE.

The service plan is a contractual obligation of the municipality subject to negotiation and prepared in that context. § 43.056(h), TEX. LOC. GOV'T CODE. The plan may be amended through negotiation at the public hearings except services may not be deleted § 43.056(g), TEX. LOC. GOV'T CODE. The plan may also be amended or repealed after its adoption if the governing body determines upon public hearings that changed conditions or subsequent occurrences make the plan unworkable or obsolete. §43.056(h), TEX. LOC. GOV'T CODE. The amended plan must provide comparable or better services than originally adopted.

The plan is valid for ten (10) years and may be renewed at the discretion of the City. § 43.056(i), TEX. LOC. GOV'T CODE. The service plan may be enforced by a resident by applying for a writ of mandamus which, if granted, requires the City to pay the applicant's attorney fees and costs; and must provide the municipality with the option of disannexing the area within thirty (30) days. *Id.* The only remedy for failure to provide services, however, is disannexation. *See, Alexander Oil*, 825 S.W.2d at 439; *Larkin*, 683 S.W.2d at 754.

ATTACK AND JUDICIAL REVIEW

STANDING: Annexation disputes typically involve the competing rights and interests of various parties including landowners, residents and municipalities. Not all interested parties, however, have standing to bring an action to challenge annexation. *City of Missouri City v Senior*, 583 S.W.2d 444 (Tex.App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.). Annexation challenges are brought by competing municipalities, landowners or residents, or the State of Texas in a quo warranto proceeding.

MOTIVE UNIMPORTANT: The motive or purpose for the annexation is irrelevant. The Courts will not review the purposes of an annexation to determine its validity, regardless if for taxation purposes and regardless of whether governmental services are being provided to the annexed territory. *See Larkin v City of Denison*, 683 S.W.2d 754, 756 (Tex.App.—Dallas 1984, no writ hist)(reviewing court may not consider the motives behind annexation because to do so invades the legislative process); *Chacon v Granata*, 515 F.2d 922 (5th Cir 1975), *cert den.* 423 U.S. 930, 46 L.Ed 2d 258, 96 S.Ct. 279 (annexation causing diminution in market value does not constitute a “taking”); *Wichita Falls v State*, 533 S.W.2d 927 (Tex. 1976), *cert den. and app. dismd.*, 429 U.S. 908, 97 S.Ct. 298, 50 L.Ed.2d 276.

LIMITED JUDICIAL REVIEW: The validity of annexation must be brought as a direct challenge to the annexation ordinance in a declaratory judgment action as to jurisdictional matters or by the state in quo warranto proceedings because of procedural irregularities. Only another municipality, the State, land owner or resident of the annexed territory have standing to challenge annexation for lack of jurisdiction in which the annexation is said to be void. *Alexander Oil Company v City of Seguin*, 825 S.W.2d 434 (Tex. 1991). Procedural irregularities may only be challenged by the State through a quo warranto proceeding in which the annexation is said to be voidable only. *Id.* Annexation may only be attacked by Quo warranto proceedings unless the annexation is void.

VOID ANNEXATIONS: (declaratory judgment by private party) include:

1. annexation of territory exceeding the size limitations. *Deacon v Euless*, 405 S.W.2d 64 (Tex. 1966); *Laidlaw Waste System, Inc. v City of Wilmer*, 904 S.W.2d 656 (Tex. 1995) (rehearing overruled);
2. annexation of territory of another municipality or its ETJ. *Vern v San Antonio*, 406 S.W.2d 236 (Tex.App.--Corpus Christi 1966, writ ref'd n.r.e.);
3. annexation of non-contiguous territory;
4. annexation where the boundary description does not close;
5. failure to receive required number of votes for passage of an ordinance. *City of Northlake v East Justin Joint Venture*, 873 S.W.2d 413, 417 (Tex.App.--Fort Worth 1994, writ den.).

VOIDABLE ANNEXATION: (quo warranto proceeding by state) includes:

1. procedural irregularities such as failure to comply with statutory notice and public hearing requirements. *Alexander Oil*, 825 S.W.2d at 438.
2. Question of valid incorporation. *City of Hurst v City of Colleyville*, 501 S.W.2d 140 (Tex.App.--Fort Worth 1973, writ ref'd n.r.e.).

COMPETING MUNICIPALITIES: Although the creation of the ETJ was intended to eliminate disputes because of the statutory formula to determine ETJ, municipalities continue to litigate: (1) whose ETJ is it; (2) whether a city relinquished its ETJ by agreement or by prior action; (3) whether a City failed to timely bring an action to challenge the annexation or whether the annexation been validated by the legislature.

FIRST IN TIME RULE STILL VIABLE: In the absence of apportionment under § 42.901 TEX. LOC. GOV'T CODE cities are faced with the "first in time - first in right" rule to annex territory in overlapping ETJ. See, *Village of Creedmoor*, 808 S.W.2d at 617. The first city to initiate annexation process acquires jurisdiction to the exclusion of all others. The "first in time" rule also applies when more than one city has statutory authority to annex the same territory. The Texas Supreme Court in *City of Murphy*, 932 S.W.2d at 479 interpreted § 43.901 to require a court challenge be brought within two (2) years after the adoption of the annexation ordinance or consent by the municipality is presumed. Thus successful invasion into and annexation of another municipality's ETJ can result even though by statute a municipality may not annex territory within the ETJ of another municipality if timely suit is not brought.

QUO WARRANTO PROCEEDINGS: Annexation which is voidable may only be challenged by quo warranto proceeding, which is an action by the state on relation of a private party. *Larkin*, 683 S.W.2d at 754. Although a private party is named, the State is the real party at interest. *State ex rel Kimmons v City of Azle*, 588 S.W.2d 666 (Tex.App.--Fort Worth 1979, writ ref'd n.r.e.); *Alexander Oil*, 825 S.W.2d at 437. Quo warranto actions are governed by Chapter 66, TEX.CIV.PRAC. & REM. CODE. The action is brought in the district court and in the name of the State of Texas. § 66.002, TEX.CIV.PRAC. & REM. CODE. The action may be brought only by the Attorney General, county or district attorney on his own motion or at the request of an individual relator. § 66.022(c) TEX.CIV.PRAC. & REM. CODE.

The action is for the benefit of the public and avoids multiplicity of suits by private parties and conflicting results. The action is also discretionary in that the State officer has the discretion whether to file the action and cannot be compelled to file the action. The State officer controls the action although the relator may secure independent counsel to assist with the approval of the State's counsel. *McFarlin*

v State ex rel. Barnard, 272 S.W.2d 630 (Tex.App.--Waco 1954, writ ref'd n.r.e.). A quo warranto action may be joined with a declaratory action in which a private party challenges annexation as void. *City of Bridge City v State ex rel. City of Port Arthur*, 792 S.W.2d 217 (Tex.App.--Beaumont 1990).

VALIDATION STATUTES

The legislature may validate an otherwise unlawful annexation. *Armstrong v Gladewater*, 242 S.W.2d 650 (Tex.App.--Texarkana 1951, writ ref'd). Typically, each legislative session the Legislature passes a validation act which validates various municipal actions, including annexation. Each Act must be examined to determine the extent and scope of validation. A validation statute is retroactive in effect and validates annexation from the time of its inception, even if the annexation is void, unless contrary to the Texas Constitution. In 1997, however, the Legislature did not pass a validation act.

The courts have on occasion construed validation statutes to reach the desired result. The extent of validation is subject to various interpretations and judicial constructions. In *State ex rel Danner v City of Watauga*, 676 S.W.2d 721 (Tex.App.--Fort Worth 1984, writ ref'd n.r.e.), a validation statute was held to validate annexation of nonadjacent or contiguous area. In the *City of the Colony v City of Frisco*, 686 S.W.2d 379 (Tex.App.--Fort Worth 1985, writ ref'd n.r.e.), a validation statute was held to validate annexation beyond the normal ETJ. The Texas Supreme Court, however, in *City of Waco v City of McGregor*, 523 S.W.2d 640 (Tex. 1975) held that a validation statute did not validate annexation of noncontiguous or nonadjacent territory in the exclusive ETJ of another city. Validation Acts however are not intended to validate annexation of noncontiguous or non-adjacent territory in the absence of specific or express provisions. *City of Westlake Hills*, 466 S.W.2d at 722. In *City of Grand Prairie v Turner*, 515 S.W.2d 19 (Tex.App.--Dallas 1974, writ ref'd n.r.e.) a validation statute cured a void annexation exceeding the ten percent (10%) limitation. As a result, validation statutes can cure defective annexations, with the exception of annexation in another City's ETJ, legal description which does not close and annexation or noncontiguous territory.

AFFECT OF ANNEXATION

PROPERTY INDEBTNESS AND TAX: When a municipality extends its boundaries, the new territory immediately becomes subject to municipal jurisdiction and all ordinances are applicable to the new territory. When territory is annexed, the public streets and alleys in the annexed territory become the public streets and alleys of the annexing municipality. *Wichita Falls v Bowen*, 182 S.W.2d 695 (Tex. 1944). The new inhabitants are subject to the same taxation burden, including obligations of bonds approved before annexation; and entitled to the same the same privileges, protection and advantages already provided within the annexing municipality. A municipality, however, may not impose property taxes on property annexed by municipality after January 1 unless the annexed territory was located in another municipality of like kind on January 1, in which case each municipality imposes property tax on the property located within its boundaries on the date the appraisal review board for the appraisal district approves the appraisal roll. See, § 26.14, TEX. TAX CODE. Thus, although the inhabitants and landowners are subject to taxation for all municipal indebtedness existing at the time of annexation, property taxation may not be imposed until January 1 immediately following such annexation unless such territory was located in another municipality of like kind. If property is annexed into a city's corporate limits after January 1, that property cannot be taxed for that year. *City of Heath v King*, 705 S.W.2d 812 (Tex.App.--Dallas 1986, no writ).

VOTING RIGHTS ACT OF 1965: Annexation of inhabited land by a municipality constitutes a change in voting practices or procedure and requires pre-clearance by the Attorney General of the United States under § 5 of the Voting Rights Act of 1965. 42 U.S.C § 1973(c). Even the annexation of vacant

land must be pre-cleared before the new residents may vote in the territory annexed. *Pleasant Grove v United States*, 107 U.S.Ct. 794, 93 L.Ed.2d 866 (1987).

ZONING: Municipalities do not have zoning authority outside of their territorial limits or within their ETJ. *See*, § 211.005(a), TEX. LOC. GOV'T CODE. Control or regulation of the development within the area to be annexed, however, is important not only to the municipality but also the landowners and residents. As a result, landowners will often negotiate with municipalities regarding zoning concurrently with the annexation process. Most comprehensive zoning ordinances provide for a zoning classification or temporary zoning classification for property annexed into the municipality. Since the Zoning Enabling Act does not permit municipalities to zone property within their ETJ or outside City limits or to do so concurrently with annexation proceedings, most comprehensive zoning ordinances preclassify such territory by applying a particular zoning classification or temporary zoning classification to annexed property. *See, Apollo Development Inc. v City of Garland*, 476 S.W.2d 365 (Tex.Civ.App.--Dallas 1972).

NONCONFORMING USES AND STRUCTURES: Notwithstanding the zoning regulations and other ordinances of the annexing municipality, the annexation of a territory may result in nonconforming uses and structures. Depending on the regulations of the annexing municipality, nonconforming structures and nonconforming uses will be allowed to continue until such uses or structures are abandoned, destroyed or terminated by appropriate regulation. Nonconforming uses and structures are protected subsequent to annexation and may continue to exist thereafter until abandonment. *See, White v City of Dallas*, 517 S.W.2d 344 (Tex.App.--Dallas 1974). The municipality's zoning regulations may legally restrict the right of the landowner to extend or enlarge a nonconforming use or structure. Determination of whether a nonconforming use or nonconforming structure prior to annexation entitles a landowner to a vested right to use the entire property for a nonconforming use or to occupy a nonconforming structure following annexation is dependent on the facts of each case and the applicable zoning regulations.

VESTED RIGHTS: Annexation may raise issues concerning vested rights. A municipality has no authority to impair or destroy vested property rights acquired prior to annexation of property. Vested rights is the landowner/developer's bar to changes in zoning and development regulations. It can be an effective defense by the owner/developer to unanticipated zoning changes or other development regulations after good faith reliance on previous law and commencement of development. It is an exception to the general rule that no owner/developer may acquire a vested right to a particular land use because local government may change the zoning laws to further the public health, safety and welfare of the community. *City of Phar v Tippitt*, 616 S.W.2d 173 (Tex. 1981); *Conner v City of University Park*, 142 S.W.2d 706 (Tex.Civ.App.--Dallas 1940, writ ref'd).

The vested rights doctrine is not well defined in Texas and is subject to various interpretations. Generally, a landowner can establish a common law right to develop property and complete construction, after a change in zoning by showing: (1) good faith; (2) reliance on existing laws; and/or a validly/issued building permit and (3) substantial expenses or liability incurred, or substantial construction completed, prior to the new ordinance's effective date. *Brown v Grant*, 2 S.W.2d 285 (Tex.Civ.App.--San Antonio 1928, no writ); *Lubbock Poster Company v City of Lubbock*, 569 S.W.2d 935 (Tex.Civ.App.--Amarillo 1978, writ ref'd n.r.e.) *cert denied* 444 U.S. 833 (1978). The landowner must show more than a mere expectation that the property's zoning classification will remain the same even after construction begins. The test of substantial construction or substantial expenses is determined from the work completed after obtaining a building permit, if one is required. How much construction creates a vested right is unclear and there are differing opinions.

Until the adoption of the so-called vested rights statute, Texas followed the majority rule that an applicant for a building permit or plat did not acquire a vested right under existing zoning prior to the issuance of a permit or plat approval. The vested rights statute was originally enacted as part of House Bill 4 in 1987 which created the Texas Department of Commerce and was codified in Chapter 481 of the TEX. GOV'T CODE. The purpose of the bill was to consolidate local and state economic development programs under a new umbrella agency, the Texas Department of Commerce, and to streamline and facilitate economic development initiatives. In 1997, the Texas legislature repealed the statute, effective September 1, 1997, by abolishing the Texas Department of Commerce and transferring its duties to the newly created Texas Department of Economic Development. *See*, Acts 1997, 75th Leg., ch. 1041 § 2. Notwithstanding the repeal of the vested rights statute the issue of common law vested rights may arise upon the annexation of property depending on the given facts of the case.

WET/DRY STATUS: Annexation of territory and boundary adjustment agreements often involve land which is “wet” for purposes of the sale of alcoholic beverages. When territory is annexed, the status of the annexed territory, whether dry or wet, retains its prior status as to the sale of alcohol. *See*, § 251.72, TEX.ALCHO.BEV. CODE; TEX. ATTY GEN. OP. NO. O-1549 (1939); TEX. ATTY GEN. OP. NO. M-3-35 (1969). Once a tract of land has been voted either wet or dry, it retains that status until another local option election has been held. Annexation by City does not alter the wet or dry status of a particular area. *Touchiness v Plainos*, 110 S.W.2d 549 (1937) (annexation of dry area by wet city did not result in former becoming wet). The status of territory annexed by a city can only be changed by subsequent election. TEX. ATTY GEN. OP. NO. H-130 (1973); TEX. ATTY GEN. OP. NO. JM-1177 (1990).

SUBDIVISION REGULATION: Municipality may extend subdivision regulations to its ETJ and enforce such ordinances. § 212.003; *City of Lucas v North Texas Municipal Water District*, 724 S.W.2d 811 (Tex.App.—Dallas 1986, writ ref'd n.r.e.). A municipality subdivision regulations are not however automatically extended to the ETJ and must be extended by ordinance. A violation of such ordinance outside the corporate limits of the municipality within the ETJ does not constitute a criminal violation but the municipality has the right to institute an action in the district court to enjoin the violation of any provision of such ordinance within the ETJ. In addition, § 242.001, TEX. LOC. GOV'T CODE, as recently amended requires a plat for area in a municipality's ETJ be approved by both the municipality and the county and the more stringent regulations control.

IMPACT FEES: Municipalities may also assess and collect impact fees for development within its ETJ if its has adopted an ordinance in accordance with Chapter 395, TEX. LOC. GOV'T CODE. Impact fees are limited to water and wastewater. Roadway impact fees may not be imposed in the ETJ for roadway facilities. §395.011(b), TEX. LOC. GOV'T CODE.

TEXAS PRIVATE REAL PROPERTY RIGHTS PRESERVATION ACT: Chapter 2007, TEX. GOV'T CODE provides for compensation for a taking which results from a overly confiscatory or restrictive laws or regulations by a municipality and provides governmental immunity is waived/abolished for such actions as to suit and liability, thus extending a private takings action to regulatory takings. It applies only to the adoption or issuance of an ordinance, rule, or similar “governmental action” that imposes a physical invasion, dedication, or exaction of private real property and certain actions that effect a municipality's ETJ. The Act does not apply unless the municipality enacts or enforces an ordinance, rule, regulation or plan that does not impose identical requirements or restrictions in the entire ETJ of the municipality.

ANNEXATION AGREEMENTS: The municipality or landowners may prefer not to annex territory under certain conditions. Section 42.044, TEX. LOC. GOV'T CODE authorizes a City to enter into an agreement not to annex business property in a designated industrial district for a period up to fifteen

(15) years. The City receives the benefit of having business located near the City with the resulting employment while the business is not burdened by ad valorem taxation. The contract may be renewed or extended for successive periods not to exceed fifteen years each. If any owner of land in the designated district is offered an opportunity to renew or extend the contract, then all other owners of land within the area must be offered the same opportunity. The City is permitted to provide fire fighting services to areas within the industrial district that is subject to the agreement. The statute also provides other protection to the City and to the business during the period in which the property may not be annexed, in that a political subdivision may not be created within the industrial district unless the City gives written consent by ordinance or resolution.

DISANNEXATION

The majority of the qualified voters of an annexed area may petition the City Council for disannexation if the municipality fails to provide services to the annexed area required by the service plan or by § 43.056, TEX. LOC. GOV'T CODE. The contents for the petition are set forth in the statute and requires information regarding the signatories and the area to be disannexed. § 43.141(d), TEX. LOC. GOV'T CODE. Prior to the circulation of the petition notice of the petition must be given by posting a copy of the petition for ten (10) days in three public places in the annexed area and by publication in a newspaper of general circulation fifteen days prior to circulation.

The City Council has sixty (60) days to act, after which suit may be brought in district court to order the disannexation. § 43.141(b), TEX. LOC. GOV'T CODE. Upon disannexation, the area cannot be annexed again for five (5) years. § 43.141(c), TEX. LOC. GOV'T CODE.

It is a fact question whether the city has failed to provide an area proposed to be disannexed services substantially equivalent to those furnished other areas with similar characteristics. The test is whether there are separate areas of the City with similar characteristics and if so whether services being furnished to one area were disparate from services to the other area. *City of Heath v King*, 665 S.W.2d 133 (Tex.App.--Dallas 1983, no writ). Disannexation for failure to provide services similar to those provided other similar areas of the City, requires evidence of the characteristics of topography, patterns of land utilization, and population density of the area sought to be disannexed and evidence of such conditions in other areas of the city which are receiving services.

HOME RULE CITIES: A home-rule city may also disannex territory in accordance with its charter so long as the procedural rules of the statute are followed. § 43.142, TEX. LOC. GOV'T CODE.

GENERAL LAW CITIES: As to general law cities, § 43.143 permits, without regard to the service plan, fifty (50) voters to petition for an election for disannexation. Upon approval of the voters, the area may be disannexed so long as the city is not reduced to less than one square mile. The property owners of a disannexed area under this provision retain their pro rata obligation to retire any existing city debt and the city may continue to levy property taxes until the pro rata debt is paid.

Any uninhabited or sparsely inhabited area may also be disannexed by a general law city by ordinance and without voter petition. The area disannexed must be at least ten acres contiguous to the City limits and have fewer than the specified number of occupied residences and business structures. § 43.144, TEX. LOC. GOV'T CODE.

Cities with a population of more than 4,000 and located in a county of 205,000 may "discontinue an area" if it is unimproved. Cities over 596,000 may discontinue non-taxable property, § 43.145, TEX. LOC. GOV'T CODE.

A general law city of a population of 1,000 or more which is not eligible to adopt a home rule charter providing water and/or sewer service to the area, provided the area does not include unoccupied territory in excess of one acre for each service address for water and sewer service may disannex the area upon request of a majority of the landowners or voters in an area which has been annexed for the city for one but not more than three (3) years. § 43.033, TEX. LOC. GOV'T CODE; *City of Coppell v State*, 435 S.W.2d 919 (Tex.App.--Dallas 1968). Such area may be reannexed by the City. TEX. ATTY. GEN. OPIN. DM-373 (1996).

The remaining provisions in chapter 43 regarding disannexation concern limited purpose annexation. §§ 43.146 and 43.904, TEX. LOC. GOV'T CODE.

REASONS FOR AND AFFECT OF DISANNEXATION

Municipalities often disannex territory for economic development reasons whether in exchange for territory with another municipality or for purposes of an annexation agreement under § 42.044, TEX. LOC. GOV'T CODE. The City of Dallas has sought boundary adjustments with adjoining suburbs so that a planned airport could be solely located within its jurisdiction. Municipalities have released territory to allow residents to be annexed by other jurisdictions where the development standards, government services or tax rates are more desirable.

Municipalities often disannex territory because the municipality does not want to or cannot provide services. Municipalities have even disannexed territory consisting of county roads to permit the County to repair and/or maintain the road.

Municipalities may even choose to abolish their existence for purpose of annexation by another municipality. Section 43.030, Tex. Loc. Gov't Code allowed the City of Richardson to annex the former Town of Buckingham after the town held an election consenting to the annexation. The abolishment and subsequent annexation raised a variety of issues including the "wet" status of Buckingham which was completely surrounded by the City of Richardson. The "wet" territory, including existing liquor stores, is a part of the City of Richardson, although the City of Richardson is "dry". The statute also required Buckingham's Comprehensive Zoning Ordinance to be adopted for application to the annexed territory for a period of ten (10) years, even though such zoning was contrary to the Comprehensive Zoning Ordinance of the City of Richardson. Issues concerning sign regulations, variances to zoning regulations, impact fees, tax abatement agreements, and building code requirements have arisen. The indebtedness and liabilities of the former Town also became the responsibility of the City of Richardson.

After disannexation the detached territory reverts to and becomes part of the county for which it was taken. The municipality's zoning regulations no longer apply, however, the subdivision regulations if extended to the ETJ will apply if the territory remains in the disannexing city's ETJ, otherwise County subdivision regulations will control the development. Ad valorem taxation by the City terminates as well. As you can discern, a variety of reasons can motivate disannexation, with a variety of resulting issues.

² The abolishment of a municipality is not addressed herein.