# STAFF REPORT

## City of Dripping Springs

**PO Box 384**
**511 Mercer Street**
**Dripping Springs, TX 78620**

**Submitted By:** Aniz Alani, City Attorney

**Council Meeting Date:** January 20, 2025

**Agenda Item Wording:** **Discussion and possible action to consider an application for redress, satisfaction, compensation, or relief made pursuant to Section 1.03.002 of the Code of Ordinances *[Refusal by council required prior to suit]* by RABD Holdings LLC regarding a request for the release of 12299 Trautwein Rd., Austin, Texas, from the Extraterritorial Jurisdiction of the City of Dripping Springs.**

**Agenda Item Sponsor:** RABD Holdings LLC

**Summary:** The applicant's request under Section 1.03.002 of the Code of Ordinance should be denied because the City is not required to grant a request for release of the subject property from the City's extraterritorial jurisdiction.

A property that was voluntarily annexed into the City of Dripping Springs' extraterritorial jurisdiction (ETJ) in Hays County is not subject to mandatory release under Tex. Loc. Gov't Code § 42.101(2) (S.B. 2038) if the statutory population criteria are met, and constitutional or statutory challenges to this exclusion—including claims of special law, vagueness, due process, or void ab initio annexation—are unsupported by Texas law and controlling precedent.

**Background**

The Texas Local Government Code, as amended, expressly exempts from the S.B. 2038 mandatory ETJ release process any area that was voluntarily annexed into a municipality's ETJ in a county like Hays County, provided the county meets certain population growth and size thresholds.

This legislative exclusion is clear, and both statutory construction and Texas case law confirm that such exemptions are valid, that voluntary ETJ expansions are recognized and enforceable, and that collateral or constitutional attacks on the validity of such annexations are generally foreclosed after two years or are otherwise without merit.

**Statutory Framework: S.B. 2038 and Tex. Loc. Gov't Code § 42.101**

The core issue is whether a property voluntarily annexed into the City of Dripping Springs' ETJ in Hays County is subject to the mandatory release provisions of S.B. 2038, codified in Subchapter D of Chapter 42 of the Texas Local Government Code. Section 42.101, as amended effective September 1, 2025, sets forth the applicability of Subchapter D and, crucially, enumerates specific exclusions.

Among these, the statute provides that Subchapter D does not apply to areas that were voluntarily annexed into a municipality's ETJ if the area is located in a county that (1) experienced more than 50% population growth from the previous federal decennial census to the 2020 census, and (2) has a population greater than 240,000. If Hays County meets these criteria, and the property in question was voluntarily annexed into the ETJ, the mandatory release process does not apply, and the City is not required to release the property from its ETJ under S.B. 2038, see Tex. Loc. Gov't Code § 42.101.

Section 42.023 of the Local Government Code further establishes that a municipality's ETJ may not be reduced without the written consent of the municipality's governing body, except in specifically enumerated circumstances. The exceptions do not override the applicability exclusions in § 42.101, reinforcing the City's authority to maintain its ETJ boundaries absent a statutory mandate to release, see Tex. Loc. Gov't Code § 42.023.

Section 42.022 recognizes that ETJ may be expanded beyond statutory distance limitations if the owners of the area request the expansion, confirming the legitimacy of voluntary ETJ inclusion, see Tex. Loc. Gov't Code § 42.022.

**Case Law: Statutory Exemptions, Finality, and Constitutional Challenges**

The Texas Supreme Court in *Elliott v. City of Coll. Station*, 717 S.W.3d 888 (Tex. 2025) confirmed that the S.B. 2038 release mechanism is subject to express statutory exemptions, including those in § 42.101, and that where an exemption applies, the mandatory release process is unavailable. The Court also emphasized that the release process is ministerial and automatic where applicable.

Section 43.901 of the Local Government Code, as interpreted by the Texas Supreme Court in *City of Murphy v. City of Parker*, 932 S.W.2d 479 (Tex. 1996), creates a conclusive presumption of consent to municipal boundary or annexation ordinances after two years, barring collateral or belated challenges to the validity of such actions except by another municipality. This principle is reinforced by appellate decisions such as *City of Roanoke v. Town of Westlake*, 111 S.W.3d 617 (Tex. App. 2003) and *Village of Creedmoor v. Frost Nat. Bank*, 808 S.W.2d 617 (Tex. App. 1991), which confirm that ETJ reductions require municipal consent unless a statute expressly provides otherwise, and that the stability of ETJ boundaries is a legislative priority.

Texas courts have also consistently held that most defects in annexation or ETJ expansion are procedural and render the action voidable, not void ab initio, and that private parties generally lack standing to challenge such actions outside of a timely *quo warranto* proceeding, see *City of San Antonio v. Hardee*, 70 S.W.3d 207 (Tex. App. 2001); *City of Houston v. Harris Co. Eastex Oaks W. & S. Dist.*, 438 S.W.2d 941 (Tex. Ct. App. 1969).

**Constitutional and Statutory Challenges**

***Special Law***

A claim that the statutory exclusion in § 42.101 constitutes an impermissible special law is unfounded. The Texas Legislature has broad authority to classify and treat municipalities and territories differently based on rational criteria, such as population size and growth rates.

The exclusion in § 42.101 applies to all areas meeting the objective criteria, not to any specific property or municipality, and is thus a general law rather than a special law. Texas courts have upheld similar classifications where the legislative distinction is rationally related to a legitimate governmental purpose, see *Elliott v. City of Coll. Station*, 717 S.W.3d 888 (Tex. 2025) (recognizing legislative authority to create exemptions and classifications in ETJ law).

***Vagueness***

The statutory language in § 42.101 is clear and objective, relying on census data and the voluntary nature of the ETJ inclusion. There is no ambiguity or vagueness that would render the statute unconstitutional. The criteria are readily ascertainable and do not require subjective interpretation by the City or affected property owners.

***Due Process***

Due process challenges to the ETJ exclusion are also without merit. The Texas Supreme Court has recognized that the Legislature has plenary authority to define municipal boundaries and ETJ status, and that property owners have no vested right to be free from municipal jurisdiction where the statutory framework is followed. The conclusive presumption of consent after two years, as established in § 43.901 and interpreted in *City of Murphy v. City of Parker*, 932 S.W.2d 479 (Tex. 1996), further insulates the City's actions from due process attacks, especially where the ETJ inclusion was voluntary and not timely challenged.

Appellate decisions have also rejected due process and takings claims premised on lack of benefit from annexation or ETJ inclusion, confirming that the mere imposition of municipal jurisdiction or regulation does not violate constitutional rights, see *City of Houston v. Houston Endowment, Inc.*, 428 S.W.2d 706 (Tex. Ct. App. 1968).

***Void ab initio Annexation***

Claims that the ETJ inclusion or annexation was void ab initio are foreclosed by both statute and case law. Section 43.901 creates a conclusive presumption of validity and consent after two years, and Texas courts have consistently held that most defects in annexation or ETJ expansion are procedural and render the action voidable, not void. Only actions wholly beyond municipal authority—such as annexing land within another city's ETJ without consent—are void ab initio, and even then, the conclusive presumption in § 43.901 may bar challenges after two years, see *City of Murphy v. City of Parker*, 932 S.W.2d 479 (Tex. 1996); *City of Houston v. Harris Co. Eastex Oaks W. & S. Dist.*, 438 S.W.2d 941 (Tex. Ct. App. 1969).

In this case, the property was voluntarily annexed into the ETJ, and there is no allegation that the action was wholly beyond the City's authority. Any procedural defects would render the action, at most, voidable and subject to timely challenge, not void ab initio. The statutory bar in § 43.901 and the lack of a timely challenge preclude any collateral attack on the validity of the ETJ status.

**Conclusion:**

The City of Dripping Springs is correct in asserting that a property voluntarily annexed into its ETJ in Hays County is not subject to mandatory release under S.B. 2038 if the statutory criteria in § 42.101 are met.

The legislative exclusion is clear, and both statutory and case law authorities confirm the validity and enforceability of such exclusions.

Constitutional and statutory challenges to the exclusion—including claims of special law, vagueness, due process, or void ab initio annexation—are unsupported by Texas law and controlling precedent.

The City is therefore on firm legal ground in denying mandatory release for such properties.

**Commission Recommendations:**

N/A

**Recommended Council Actions:**

Deny request for relief.