



Municipal Annexation in Texas

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Acknowledgments

The Texas Municipal League’s annexation manual has served as a crucial resource for city officials and staff across Texas for over two decades. This latest edition represents a comprehensive update to ensure that the Manual continues to provide accurate, relevant, and practical guidance in the ever-evolving landscape of municipal governance.

I would like to extend my deepest gratitude to Scott Houston, former Deputy Executive Director and General Counsel of the Texas Municipal League, who authored and edited the previous versions of this guide from its inception in 2000 until recently. Scott’s dedication and expertise have shaped this manual into the invaluable tool it is today, and his contributions to the League and to Texas municipalities are immeasurable.

As the current author and editor, it has been both a privilege and a responsibility to build upon Scott’s work. This edition reflects significant changes in annexation law and practice, and I hope it will continue to serve as a trusted resource for city leaders across Texas.

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1.0 INTRODUCTION TO MUNICIPAL JURISDICTION

A Note on Conventions Used in this Manual:

The reader will find that this manual is organized in an outline format rather than in chapters or as a straight Q&A or FAQ. This is a deliberate choice, as an outline allows for more particular cross-referencing within the manual, saving the author time in re-writing common procedures and saving the reader time when searching for a reference.

For clarity, within this publication, the area within the municipal boundaries will be referred to as “the municipal area,” while the area within the extraterritorial jurisdiction will be referred to as “the ETJ.” When the term “city limit(s)” is used, it refers to the boundary line delineating the border between the municipal area and the area outside the municipal area. The area being annexed or proposed to be annexed will be called the “annexation area.”

Onward!

What does “jurisdiction” mean?

Jurisdiction means the government’s general power to exercise authority of all persons and things within its territory.¹ When we talk about a city’s jurisdiction in this publication, we are referring to the *geographical area* in which the city exercises regulatory authority. Two distinct geographical areas exist that affect the scope of a city’s jurisdiction, and they are the areas: (1) within a city’s municipal boundaries (a/k/a the city limits); and (2) within the city’s extraterritorial jurisdiction or ETJ. The area within the city limits may expand or contract; likewise, the area within the ETJ may expand or contract.

What is the initial size of a city’s overall jurisdiction?

If a new city were to incorporate today as a general-law city, the size of its initial jurisdiction would depend on the population of the city.

The municipal area would be limited as follows:²

Community Size (Inhabitants)	Municipal Area Maximum at Incorporation
Fewer than 2,000	2 square miles
2,001 – 4,999	4 square miles
5,001 - 9,999	9 square miles
10,000 or more	No statutory limitation

Table 1: Size Limitations at Incorporation

¹ JURISDICTION, Black's Law Dictionary (12th ed. 2024)

² Tex. Loc. Gov’t Code § 5.901.

The area of the ETJ would be the unincorporated area that is contiguous to the city and located within a certain distance from the city limits.³ The distances are based on city population as shown in Table 2, below:

Community Size (Inhabitants)	ETJ is the Area With the Following Distance of the City Limits:
Fewer than 5,000	½ mile
5,000 – 24,999	1 Mile
25,000 – 49,999	2 Miles
50,000 – 99,999	3 ½ Miles
100,000 or more	5 Miles

Table 2: Size of ETJ Based on Population

Based on these tables, a newly incorporated city with 2,500 inhabitants would have a total jurisdictional area limited to 4 square miles in municipal area with a 1/2 -mile ETJ extending out from the city limits. For the 1,200+ cities that already exist in Texas, the limitations from Table 1. have little on-going relevance, since they limit municipal area only at the time of incorporation. However, as a city grows in population and passes the thresholds in Table 2, the ETJ automatically expands out from the city limits.

Is there a maximum size that a city’s municipal area or ETJ may be?

There is no strict limit to the overall size of the municipal area or the ETJ. The tables above reflect: (1) limitations on the size of the municipal area at the time of incorporation only; and (2) the extent of population-based expansions of the ETJ. Through the processes of “annexation,” a city’s municipal area and/or ETJ may expand well beyond these initial and automatic sizes. A city’s jurisdiction may also contract through the process of “disannexation.” Further, a city’s ETJ may expand or contract in accordance with factors discussed in Section 4.0, below.

What is “annexation?”

“Annexation” is the “formal act by which a country, state, or municipality incorporates land within its dominion.”⁴ In simpler terms, annexation is the process by which a Texas city can expand the amount of area within the city’s jurisdiction. Territory may be annexed into the municipal area or into the ETJ. Annexation of territory into the municipal area will be discussed in Section 2.0, below, and annexation of territory into the ETJ will be detailed in Section 4.0.

In this publication, “annexation” generally refers to “full-purpose” annexation, meaning the annexed area becomes part of the city, subject to its full range of services, regulations, and taxation. In certain situations, areas may also be annexed for “limited purposes,” where the

³ Tex. Loc. Gov’t Code § 42.021(a).

⁴ ANNEXATION, Black’s Law Dictionary (12th ed. 2024).

annexed area is subject to specific regulations, such as zoning, health, safety, and environmental rules, without receiving full municipal services or being subject to city property taxes. Home rule cities with populations over 225,000 can annex areas to apply planning, zoning, health, and safety ordinances.⁵ Other cities may annex areas of certain special districts that are subject to strategic partnership agreements for limited purposes. This process is explained further in Section 2.2.2, below.

What is “disannexation?”

“Disannexation” is essentially the reverse action of annexation and is the release of territory from a city’s jurisdiction. As with annexation, territory may be disannexed from a city’s municipal area or ETJ. The process of disannexation of area from the municipal boundaries will be discussed in Section 3.0, below, and removal of territory from the ETJ will be detailed in Sections 4.3 and 4.4, below.

⁵ Tex. Loc. Gov’t Code § 43.121; See *City of Austin v. City of Cedar Park*, 953 S.W.2d 424, 432 (Tex. App.—Austin 1997, no writ) (stating that limited-purpose annexation allows a home-rule city with a population of more than 225,000 persons to annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances). Because this process is limited to roughly the largest 15 cities in the state, it is not fully briefed herein.

2.0 ANNEXATION INTO THE MUNICIPAL BOUNDARIES

This section details the procedures a city must follow in order to annex a tract of land into the municipal area. While there are several methods to annex property into the municipal area, far and away the most common method is annexation based on the request of the landowner, detailed below.

2.1 Prerequisites Common to All Annexations

Annexation Area must be within the City's ETJ

A city may only annex area located in the city's ETJ unless the city owns the area.⁶ This applies to all annexations, whether they are "consent," "consent-exempt," or annexations based on a development agreement. Note that since 1999, annexation of city-owned property does not expand the city's ETJ if the property is: (1) located outside of the city's ETJ; and (2) not contiguous to other city property.⁷

Development Agreement must be offered for certain types of property

Before a property that is appraised as agricultural, wildlife management, or timber management may be annexed, the city must offer the landowner a development agreement (DA) that would: (1) guarantee the continuation of the extraterritorial status of the area; and (2) 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.⁸

When offering the DA, the city must provide the landowner with certain written disclosures including: (1) a statement that the landowner is not required to enter into the DA; (2) the legal authority under which the city may annex the land, with references to relevant law; (3) a plain-language description of the applicable annexation procedures; (4) whether these procedures require the landowner's consent; and (5) a statement regarding the city's waiver of immunity to suit.⁹ Failure to make these disclosures voids the DA.¹⁰ The offered DA must be rejected by the landowner in order for the annexation to move forward, because agreement to the DA guarantees the continuation of the area's ETJ status.

Must a city offer a DA even if the landowner voluntarily seeks annexation?

Yes. The requirement to offer a DA and make the required disclosures depends on the tax appraisal status of the property not the method of annexation, so even when

⁶ *Id.* § 43.014 (2023).

⁷ *Id.* § 43.0225; Op. Tex. Att'y Gen. No. GA-0014 (2003)

⁸ *Id.* § 43.016.

⁹ *Id.* § 43.005(a).

¹⁰ *Id.* § 43.005(b).

a landowner requests annexation, the city must offer a conforming development agreement and make the required disclosures.

For Home Rule Cities, the Annexation Area must be Adjacent to the City¹¹

What does “adjacent” mean?

In the context of municipal annexation, “adjacent” typically means neighboring or close by, but not necessarily contiguous or directly touching.¹² Cities sometimes dispute whether another city is more or less adjacent to a particular parcel, and courts determine adjacency as a matter of law based on the specific facts and legislative context of each case.¹³ The Texas Supreme Court has held that territory within the exclusive extraterritorial jurisdiction of one city cannot be considered adjacent to another city as a matter of law.¹⁴

What does “contiguous” mean?

An area is “contiguous” to the city when the annexation area directly touches or shares a boundary line with the municipal area.¹⁵

Must an annexation area be contiguous to the city?

Generally not. While contiguity between the annexation area and the city may have an effect on annexations in certain circumstances, none of the consent annexation procedures discussed below require the annexation area to be contiguous the city. This may come as a surprise to many, because prior to legislative changes to annexation law in 2019,¹⁶ contiguity between the annexation area and the annexing city was a statutory requirement for most annexations.¹⁷ Note that home rule city charters may contain contiguity requirements, which would have to be followed.¹⁸

How can a development agreement create adjacency to a proposed annexation area?

For purposes of state law, city charter or ordinance requirements requiring an annexation area to be adjacent to the city, an area adjacent or contiguous to an area that is the subject of a certain development agreement is considered adjacent or contiguous to the city.¹⁹ In other words, a city is not prohibited from annexing land beyond the area that is the subject of the agreement solely because that land is not

¹¹ *Id.* § 43.003(2).

¹² *City of Waco v. City of McGregor*, 523 S.W.2d 649, 653 (Tex. 1975).

¹³ *Id.*; See *City of Irving v. Dallas Cnty. Flood Control Dist.*, 383 S.W.2d 571, 576 (Tex. 1964).

¹⁴ *Waco*, 523 S.W.2d at 653.

¹⁵ *Id.*; CONTIGUOUS, Black’s Law Dictionary (12th ed. 2024).

¹⁶ Tex. S.B. 347, 86th Leg., R.S. (2019).

¹⁷ See Tex. Local Gov’t Code §§ 43.023, .024, .025, .028, .029, .0751(r), .0754, .101 (2017); **Justia**. “Texas Local Government Code Chapter 43 (2017) - Municipal Annexation.”

<https://law.justia.com/codes/texas/2017/local-government-code/title-2/subtitle-c/chapter-43/>. Accessed Aug. 2, 2024.

¹⁸ Tex. Loc. Gov’t Code § 43.003(a).

¹⁹ *Id.* § 43.016(c).

contiguous to the city limits, so long as the area touches the area that is subject to the development agreement.

Is there an adjacency requirement for general-law cities?

No. While home rule cities are subject to the statutory requirement for adjacency between the annexation area and the city, there is no corresponding requirement for general-law cities in state law.

Annexation Area Must be a Certain Minimum Size

With certain important exceptions, a city cannot annex an area which is smaller than 1,000 feet at its narrowest point.²⁰ The biggest exception to this rule is that it does not apply to a proposed annexation that is requested in writing by the landowners or by a majority of voters in the annexation area.²¹ Additionally, this width requirement does not apply if the city is contiguous to the annexation area on at least two sides, or if another jurisdiction is contiguous to the annexation area.²²

²⁰ *Id.* § 43.054.

²¹ *Id.* § 43.054(b)(2).

²² *Id.* § 43.054(b)(1), (3).

2.2 Annexation Procedures

2.2.1 Consent Annexations

2.2.1.1 Annexation on Request of the Owners

May a city annex an area if all the landowners in the area request annexation?

Yes. A city may annex an area if each owner of land in the annexation area requests the annexation.²³ As detailed below, before the city may adopt the ordinance annexing the area, the city must: (1) negotiate and enter a certain written service agreement with the owner(s); (2) give notice to certain public entities and public-school districts; and (3) provide notice of and conduct a public hearing. This process is relatively simple and is the most commonly used method to annex areas into a city.

What must the written service agreement contain?

The governing body of a city that elects to annex an area upon the request of a landowner must first negotiate and enter into a written agreement with the owner(s) of land in the annexation area for the provision of city services in the area. The agreement must list the services the city will provide to the annexation area on the annexation date and include a schedule for providing any additional services not available on that date.²⁴ The city is not required to provide a service that is not included in the agreement.²⁵

How many public hearings are required?

One public hearing is required.²⁶

What are the notice requirements for the public hearing?

In addition to any meeting notice requirements found in other state law,²⁷ ordinance, or charter provision, the city must: (1) post notice of the public hearing on its website if it has one; and (2) publish notice of the hearing in a newspaper of general circulation in the city and the annexation area.²⁸ The notice in the newspaper must be published one time between 10 and 20 days before the date of the hearing.²⁹ Likewise, the notice for the hearing must be posted on the city's website between 10 and 20 days before the hearing; however, it must stay posted until the hearing date.³⁰

Must the city notify public entities of the proposed annexation?

Yes. A city that proposes to annex an area must give written notice of the proposed

²³ *Id.* § 43.0671

²⁴ *Id.* § 43.0672(b)

²⁵ *Id.* § 43.0672(c)

²⁶ *Id.* § 43.0673(a)

²⁷ See Tex. Gov't Code ch. 551.

²⁸ *Id.* § 43.0673(d)

²⁹ *Id.* § 43.0673(d)(1)

³⁰ *Id.* § 43.0673(d)(2)

annexation to certain public entities located in or providing services to the annexation area.³¹ This notice must be provided within the required period for providing notice of the hearing and must contain a description of the annexation area, any resulting financial impact on the public entity, and any proposal the city has to abate or minimize the financial impact on the entity.³² The public entities that must be notified specifically include: (1) counties; (2) fire protection service providers, including volunteer fire departments; (3) emergency medical services providers, including volunteer EMS providers; and (4) certain specific special districts, including municipal utility districts and water control and improvement districts.³³ The annexation may not proceed if required notice is not given.³⁴

Must the city notify a school district of a proposed annexation?

Yes. A city that proposes to annex an area must give written notice of the proposed annexation to each public school district located in the annexation area.³⁵ This notice must be provided within the required period for providing notice of the hearing and must contain a description of the annexation area, any resulting financial impact on the school district, and any proposal the city has to abate or minimize the financial impact on the district.³⁶ The annexation may not proceed if required notice is not given.³⁷

Must the city take certain actions at the hearing?

In addition to conducting a hearing, the city must provide interested parties an opportunity to be heard at the hearing.³⁸ During the hearing, the city may adopt the adopt an ordinance annexing the area.³⁹

If the city wishes to annex the area, must it adopt the ordinance during the hearing?

No, the ordinance can be adopted after the hearing, but the city may adopt the ordinance during the hearing.⁴⁰

³¹ *Id.* § 43.9051(b)

³² *Id.* § 43.9051(b)(1), (d).

³³ *Id.* § 43.9051(a), .062(b)(2)(B)

³⁴ *Id.* § 43.9051(e)

³⁵ *Id.* § 43.905(a)

³⁶ *Id.* § 43.905(a)(1), (b).

³⁷ *Id.* § 43.905(c)

³⁸ *Id.* § 43.0673(c)(1)

³⁹ *Id.* § 43.0673(c)(2)

⁴⁰ *Id.*

2.2.1.2 Annexation of an Area with a Population of Less than 200 by Petition

May a city annex an area with a population under 200, where some landowners do not wish to be annexed?

Possibly. A city may annex an area with a population of less than 200 by obtaining consent of a majority of the registered voters and landowners through a petition process. The city may annex the area if: (1) more than 50% of the registered voters in the area sign a petition consenting to the annexation; and (2) if these voters do not own over 50% of the land in the area, more than 50% of the landowners in the area must sign the petition.⁴¹

As detailed below, before the city may adopt the ordinance annexing the area, the city must: (1) adopt a resolution making certain findings and containing certain information; (2) provide notice: (i) to certain public entities and public-school districts; and (ii) of a public hearing; (3) conduct a public hearing; (4) create and circulate a petition for signatures for a certain period of time; (5) process the final petition; and (6) if the petition contains the requisite signatures, conduct two public hearings before adopting an ordinance annexing the area. Note that three public hearings are required before the area can be annexed using these procedures.

Please note that annexations following these procedures are rare. As such, the following information has not been frequently tested in the real world.

What are the background steps in this process?

The city should verify that the area has a population under 200 and determine whether more than 50% of the registered voters own over 50% of the land within the annexation area, as this will affect who will be required to sign the petition. Additionally, the city must review the prerequisites common to all annexations detailed in Section 2.1, above, including determining whether a development agreement needs to be offered to any landowners in the annexation area. After the city is satisfied that all background requirements have been met, it may continue with the process below:

1. City Council Adopts Resolution:

Are there requirements for the resolution?

Yes. The resolution must contain:

1. Statement of Intent
 - A clear statement indicating the city's intent to annex the area;
2. Description and Map
 - A detailed description of the annexation area, and
 - A map showing the boundaries of the area.
3. Services to be Provided
 - A description of each service the city will provide in the area on or

⁴¹ *Id.* § 43.0681

after the effective date of the annexation, including, as applicable:

- Police protection
 - Fire protection
 - Emergency Medical Services
 - Solid waste collection
 - Operation and maintenance of water and wastewater facilities
 - Operation and maintenance of roads and streets (including street lighting)
 - Operation and maintenance of parks, playgrounds, and swimming pools
 - Operation and maintenance of any other publicly owned facility, building, or service;
4. List of Initial Services
- A list of each service the city will provide on the effective date of the annexation
5. Service Provision Schedule
- 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.⁴²

2. Notice of Proposed Annexation and Public Hearing

Must the city specifically provide notice of the proposed annexation to residents and landowners in the annexation area?

Yes. The city must mail the notice to each resident and property owner in the proposed annexation area within seven days after adopting the resolution.⁴³ The notice must include: (1) the date, time, and location of the public hearing; (2) an explanation of the 180-day petition period; and (3) a description, list, and schedule of services to be provided by the city in the area on or after annexation.⁴⁴

Must the city provide notice of the proposed annexation to public school districts and other public entities?

Yes. The city must provide notice of the proposed annexation to public school districts and other public entities in the same manner detailed in Section 2.2.1.1 above.

When must the initial public hearing be held?

The public hearing must be conducted not earlier than the 21st day and not later than

⁴² *Id.* § 43.0682

⁴³ *Id.* § 43.0683

⁴⁴ *Id.*

the 30th day after the city adopts the resolution to annex the area.⁴⁵

3. The Petition:

What must the petition contain?

The petition must include a map and description of the annexation area⁴⁶ and clearly state that a person signing the petition is consenting to the proposed annexation.⁴⁷

Who may sign the petition?

The petition must be signed by registered voters of the area proposed to be annexed.⁴⁸ However, if registered voters do not own more than 50% of the land in the area, the petition may also be signed by landowners who are not registered voters,⁴⁹ and the petition must clearly indicate whether each signer is a registered voter, a landowner, or both.⁵⁰

What must be included for a petition signature to be valid?

The signatures must be written in the signatory's own handwriting;⁵¹ however, the city may provide for a landowner in the area who is not a resident to sign the petition electronically.⁵² Each petition signature must be accompanied by: (1) the signer's printed name; (2) the signer's: (i) date of birth; or (ii) voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration; (3) the signer's residence address; and (4) the date of signing.⁵³

May a signatory later withdraw their signature?

Yes. A signatory may withdraw their signature by deleting it from the petition or filing an affidavit with the city.⁵⁴ To be effective, the signature must be withdrawn before the petition is filed with the city.⁵⁵

When may residents and landowners in the annexation area sign the petition?

The city may collect signatures only between the 31st day and the 180th day after the resolution adoption date.⁵⁶

⁴⁵ *Id.* § 43.0684

⁴⁶ *Id.* § 43.0685(d)

⁴⁷ *Id.* § 43.0685(c)

⁴⁸ *Id.* § 43.0685(a)

⁴⁹ *Id.* § 43.0685(a-1)

⁵⁰ *Id.* § 43.0685(a-2)

⁵¹ *Id.* § 43.0685(e); Tex. Elec. Code § 277.002(b)

⁵² Tex. Loc. Gov't Code § 43.0685(a-1)

⁵³ Tex. Elec. Code § 277.002

⁵⁴ *Id.* § 277.0022

⁵⁵ *Id.*

⁵⁶ Tex. Loc. Gov't Code § 43.0685(b)

4. Petition Verification and Results:

What happens after the 180-day petition period ends?

At the end of the petition period, the city secretary or other person responsible for verifying signatures shall verify the petition, and the city must inform the residents and property owners in the proposed annexation area of the petition results.⁵⁷

What happens if the city obtains sufficient signatures?

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;⁵⁸ (2) holding a public hearing at which members of the public are given an opportunity to be heard;⁵⁹ and (3) holding a final public hearing not earlier than the 10th day after the date of the first public hearing.⁶⁰ The city may adopt the ordinance annexing the area at the final hearing.⁶¹

What happens if the city does not obtain sufficient signatures?

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.⁶² The only further action required by the city is to notify the residents and property owners in the proposed annexation area of the petition results, and the annexation process ends.⁶³ There are no statutory guidelines regarding what form this notice must take. Note that the city may not adopt another resolution to again propose annexing the area until the first anniversary of the date the petition period ended.⁶⁴

Can the annexation be challenged or protested?

Yes. If a petition protesting the annexation is received by the city secretary 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.⁶⁵ This protest petition must be signed by a number of registered voters of the city equal to at least 50% of the number of voters who voted in the most recent city election.⁶⁶

May a city take retaliatory action against an area that disapproves a proposed annexation?

No. The city may not retaliate against residents in an area by reducing or

⁵⁷ *Id.* § 43.0686(a)

⁵⁸ *Id.* § 43.0686(a)

⁵⁹ *Id.* § 43.0686(c)(2)

⁶⁰ *Id.* § 43.0686(c)(3)

⁶¹ *Id.*

⁶² *Id.* § 43.0686(b)

⁶³ *Id.* § 43.0686(a)

⁶⁴ *Id.* § 43.0686(b)

⁶⁵ *Id.* § 43.0687

⁶⁶ *Id.*

discontinuing existing governmental services, including water or wastewater services, even if the annexation is not approved.⁶⁷ Additionally, the city cannot initiate rate proceedings to increase charges solely because the annexation was disapproved.⁶⁸ Likewise, cities that sell water wholesale to special districts cannot charge higher rates than are charged to other similarly situated areas just because the district is in an area that rejected an annexation.⁶⁹

⁶⁷ *Id.* § 43.0688(a)

⁶⁸ *Id.* § 43.0688(b)

⁶⁹ *Id.* § 43.0688(c)

2.2.1.3 Annexation of an Area with Population of 200 or More by Election

May a city annex an area with a population of 200 or more, where some landowners do not wish to be annexed?

Possibly. A city may annex an area with a population of 200 or more by obtaining consent through an election or, under certain conditions, a petition.⁷⁰ The city must hold an election in the proposed annexation area, and a majority of the qualified voters must approve the annexation.⁷¹ If the registered voters do not own more than 50 percent of the land in the area, the city must also obtain consent through a petition signed by more than 50 percent of the landowners.⁷²

As detailed below, before the city may adopt the ordinance annexing the area, the city must: (1) adopt a resolution making certain findings and containing certain information; (2) provide notice: (i) to certain public entities and public-school districts; and (ii) of a public hearing; (3) conduct a public hearing; (4) create and circulate a petition for signatures for a certain period of time; (5) process the final petition; and (6) if the petition contains the requisite signatures, conduct two public hearings before adopting an ordinance annexing the area. Note that three public hearings are required before the area can be annexed using these procedures.

Please note that annexations following these procedures are rare. As such, the following information has not been frequently tested in the real world.

What are the background steps in this process?

The city should verify that the area has a population of 200 or more and determine whether the registered voters of the annexation area own over 50 percent of the land within the area, as this will affect whether a petition is required.⁷³ Additionally, the city must review the prerequisites common to all annexations detailed in Section 2.1, above, including determining whether a development agreement needs to be offered to any landowners in the annexation area. After the city is satisfied that all background requirements have been met, it may continue with the process below:

1. City Council Adopts Resolution:

Are there requirements for the resolution?

Yes.⁷⁴ The requirements for the resolution are identical to the requirements from Section 2.2.1.2, above.

⁷⁰ *Id.* § 43.0691

⁷¹ *Id.* § 43.0691(1)

⁷² *Id.* § 43.0691(2)

⁷³ *Id.* § 43.0691

⁷⁴ *Id.* § 43.0692

2. Notice of Proposed Annexation and Two Public Hearings

Must the city specifically provide notice of the proposed annexation to residents and landowners in the annexation area?

Yes. The city must mail the notice to each resident and property owner in the proposed annexation area within seven days after adopting the resolution.⁷⁵ The notice must: (1) include the date, time and location of the two required public hearings; (2) provide 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 by the city in the area on or after annexation.⁷⁶

Must the city provide notice of the proposed annexation to public school districts and other public entities?

Yes. The city must provide notice of the proposed annexation to public school districts and other public entities in the same manner detailed in Section 2.2.1.1 above.

How many public hearings are required before the election?

Two.⁷⁷ The city council must conduct an initial public hearing not earlier than the 21st day and not later than the 30th day after the date the city council adopts the resolution to annex the area. The city council 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 the resolution.⁷⁸

⁷⁵ *Id.* § 43.0693

⁷⁶ *Id.*

⁷⁷ *Id.* § 43.0694

⁷⁸ *Id.*

3. Possible Petitions:

3a. Property Owner Petition:

When might a petition signed by landowners in the annexation area be required?

If the registered voters in the proposed annexation area do not own more than 50 percent of the land, the city must also obtain consent from a majority of the property owners.⁷⁹ This consent must come through a petition signed by more than 50 percent of the landowners in the area.⁸⁰ The city must follow the petition process outlined in Section 2.2.1.2, above, which includes specific requirements for the petition's timing, content and verification.⁸¹ Following the election, the city must inform the residents and property owners in the proposed annexation area of the petition results.⁸²

What happens if the city does not obtain sufficient signatures?

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 the annexation process ends.⁸³ There are no statutory guidelines regarding what form this notice must take. Note that the city may not adopt another resolution to again propose annexing the area until the first anniversary of the date the initial resolution was adopted.⁸⁴

3b. Protest Petition:

Can an annexation by election be protested?

Yes. If a petition protesting the proposed annexation is signed by a number of registered voters of the city equal to at least 50% of the number of voters who voted in the most recent city election and is received by the city secretary before the date the election is held, 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.⁸⁵

4. Election:

When must the city hold the annexation election?

The city must hold the annexation election on the first uniform election date that falls

⁷⁹ *Id.* § 43.0695(a)

⁸⁰ *Id.*

⁸¹ *Id.* § 43.0695(b)

⁸² *Id.* § 43.0697(a)

⁸³ *Id.* § 43.0697(b)

⁸⁴ *Id.*

⁸⁵ *Id.* § 43.0698

on or after the 90th day following the adoption of the resolution to annex the area.⁸⁶ However, if the consent of the property owners is required because the registered voters do not own more than 50 percent of the land, the election must be held on the first uniform election date that falls on or after the 78th day following the end of the petition period to obtain that consent.⁸⁷ The election must be conducted in the same manner as general municipal elections, with the city covering the costs.⁸⁸

Who votes in the election?

Only the qualified voters in the annexation area may vote on the question of the annexation, and a majority of the votes received at the election approves the annexation.⁸⁹

How often may a city hold annexation elections?

If an election on annexation is held, the city cannot hold another annexation election before the corresponding uniform election date of the following year.⁹⁰

What must a city do following the election?

Regardless of whether the annexation election passes or fails, following the election, the city must notify the residents of the area proposed to be annexed of the results of the election and the landowner petition, if it was required.⁹¹

If the annexation is not approved:

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 annexation area 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 initial resolution.⁹²

If the annexation is approved:

If a majority of qualified voters approve the proposed annexation, and if the city obtains the required number of signatures on a petition of landowners, if required, the city may adopt an ordinance annexing the area following two public hearings.⁹³ While there is no statutory timeline related to the timing of the first of these two hearings, the final public hearing not earlier than the 10th day after the date of the first of these public hearings.⁹⁴ The city may adopt the

⁸⁶ *Id.* § 43.0696(a)(1)

⁸⁷ *Id.* § 43.0696(a)(2)

⁸⁸ *Id.* § 43.0696(b)

⁸⁹ *Id.* § 43.0691(1)

⁹⁰ *Id.* § 43.0696(c)

⁹¹ *Id.* § 43.0697(a)

⁹² *Id.* § 43.0697(b)

⁹³ *Id.* § 43.0697(c)

⁹⁴ *Id.*

ordinance annexing the area at the final hearing.⁹⁵

Note that if the city timely received a sufficient protest petition as detailed above, 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.⁹⁶

May a city retaliate against an area following an annexation election?

No, a city may not retaliate against an area that disapproves of its proposed annexation. Specifically, a city must continue to provide governmental services, such as water or wastewater services, that the city was legally required to provide prior to the election, regardless of the annexation disapproval. The city cannot initiate rate increases or charge higher rates for water services solely because an area or district disapproved of the annexation.⁹⁷

⁹⁵ *Id.*

⁹⁶ *Id.* § 43.0698

⁹⁷ *Id.* § 43.0699

2.2.2 Consent Exempt Annexations

In addition to the consent annexation procedures discussed above, state law contains provisions detailing the procedures required to annex the following eight specific types of areas which do not require the consent of the area residents:

- Enclaves
- Industrial Districts
- Areas owned by Type-A Cities
- Navigable Streams
- An area subject to a Strategic Partnership Agreement
- Municipally owned Reservoir
- Municipally owned Airport
- Certain Roads or Rights-of-Way

These are known as “consent exempt” procedures. Each of the categories of property is unique, with some of the categories being bracketed to very specific locations⁹⁸ or having been created as a legislative fix to a particular problem.⁹⁹ Being unique, these types of annexations are much rarer than consent annexations; therefore, these procedures are likely inapplicable in many circumstances.

2.2.2.1 Additional Prerequisites for Consent-Exempt Annexations:

Requirement that the Area be Located in the City’s ETJ

This requirement is exactly the same as that discussed in Section 2.1, above.

Width Requirements:

With certain exceptions, a city cannot annex a narrow strip of land, whether publicly or privately owned, including areas along roads, highways, rivers, streams, or creeks, if the area is less than 1,000 feet wide at its narrowest point. However, this restriction does not apply if: (1) the city’s boundaries are contiguous with the area on at least two sides; (2) the annexation is requested through a written petition by the landowners or a majority of the qualified voters in the area; or (3) the area is adjacent to another jurisdictional boundary.¹⁰⁰

No annexation off a narrow strip:

A city cannot annex an area within its ETJ solely because the area is next to a narrow strip of

⁹⁸ See Tex. Loc. Gov’t Code § 43.0115(a); See also Tex. Loc. Gov’t Code § 43.0117

⁹⁹ See *City of Waco v. City of McGregor*, 523 S.W.2d 649 (Tex. 1975) (In 1975 the Texas Supreme Court ruled that the City of McGregor could not annex the city’s airport because it was within Waco’s ETJ.)

¹⁰⁰ Tex. Loc. Gov’t Code §§ 43.054(a)-(c) (noting that this width requirement does not apply to certain areas of Ellis County near Waxahachie); 43.1056(d) (noting that width requirements do not apply to certain right-of-way annexations).

municipal land that is less than 1,000 feet wide at its narrowest point.¹⁰¹ Additionally, a city cannot annex an area within its ETJ solely because it is next to municipal land that was annexed before September 1, 1999, if that land was also part of the ETJ only due to its connection to a narrow strip less than 1,000 feet wide.¹⁰² Certain exceptions may apply.¹⁰³

Maximum Annual Amount of Annexation:

A city can only annex up to 10 percent of its incorporated area in a given calendar year, based on the city's size as of January 1 of that year.¹⁰⁴ This limit includes areas annexed for limited purposes, but exceptions apply, allowing for annexations above this limit.¹⁰⁵ Most notably, property annexed with the consent of the owners does not apply to these limitations.¹⁰⁶ Additionally, a city which annexes less than 10 percent may carry over the unused allocation for use in later years but may never annex a total area greater than 30 percent of the incorporated area of the city.¹⁰⁷

Findings Required for an Annexation that Surrounds an Area:

If a proposed annexation would cause an area to be surrounded by the annexing city but would not include the surrounded area, the governing body of the city must find, before completing the annexation, that surrounding the area is in the public interest.¹⁰⁸

A Note on Annexation Plans: Is an annexation plan required?

There is no statutory requirement that a city adopt an annexation plan. Section 43.052 is entitled "Annexation Plan Required;" however, that section does not detail what an "annexation plan" would contain and contains no requirement that a city adopt an annexation plan.¹⁰⁹ The adoption of an annexation plan triggers a requirement for home rule cities to create certain maps related to the annexation.¹¹⁰ Because there is no statutory requirement to create or amend an annexation plan, there is no statutory trigger for this map requirement. Whether this statute has any effect in the absence of a requirement to adopt an annexation plan is an open question. Note that the fact that the section is entitled "Annexation Plan Required" neither limits nor expands the meaning of the statute.¹¹¹

¹⁰¹ *Id.* § 43.0545(a), (e) (noting that roads, highways, rivers, lakes, or other bodies of water are not included in computing the 1,000-foot distance unless the area being annexed includes land in addition to a road, highway, river, lake, or other body of water).

¹⁰² *Id.* § 43.0545(b); *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.").

¹⁰³ Tex. Loc. Gov't Code § 43.0545(c), (d)

¹⁰⁴ *Id.* § 43.055

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* § 43.055(a)(1), (3), (4)

¹⁰⁷ *Id.* § 43.055(b), (c)

¹⁰⁸ *Id.* § 43.057

¹⁰⁹ *Id.* § 43.052

¹¹⁰ *Id.* § 43.052(f-2)

¹¹¹ Tex. Gov't Code § 311.024

2.2.2.2 Common Consent-Exempt Procedures to Annex an Area

Requirement to Offer Development Agreement

This requirement is exactly the same as that discussed in Section 2.1, above.

Map Requirement in a Home Rule City:

Before starting annexation proceedings, a home-rule city must create or arrange for the creation of a digital map showing the annexation area and any area that would be added to the city's extraterritorial jurisdiction. This map must be made publicly available at no cost, in a format commonly used by geographic information system (GIS) software, or in another widely used electronic format if GIS software is not available. If the city has a website, the map must also be posted online.¹¹²

Service Plan Required:

In short, a city must develop a service plan outlining how it will provide full municipal services to the newly annexed area within 2.5 years of annexation.¹¹³ If certain services cannot be reasonably provided within that timeframe, the plan can extend the deadline to 4.5 years. However, capital improvements must only be substantially completed within that 4.5-year period. "Full municipal services" means services provided by the annexing city within its full-purpose boundaries, including water and wastewater services but excluding gas or electrical service.¹¹⁴ 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.¹¹⁵ However, essential services like police, fire protection, emergency medical services, and road maintenance must begin immediately on the annexation's effective date.¹¹⁶ Note that these requirements are very detailed, but they been removed from this manual, because they are used so infrequently.

Two Public Hearings:

Before a city may begin 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.¹¹⁷ The hearings must be held between 20 and 40 days before the

¹¹² Tex. Loc. Gov't Code § 43.0635

¹¹³ *Id.* § 43.056

¹¹⁴ *Id.* § 43.056(c)

¹¹⁵ *Id.* § 43.056(m); *City of Heath v. King*, 665 S.W.2d 133, 136 (Tex App.--Dallas 1983, no writ) (noting that whether a city provides services substantially equivalent to those furnished other areas with similar characteristics involves two considerations: (1) whether there are two separate areas of the city with similar characteristics; and if so, (2) whether services being furnished to one area disparate from those being furnished to the other).

¹¹⁶ Tex. Loc. Gov't Code § 43.056(b)

¹¹⁷ *Id.* § 43.063(a)

annexation proceedings begin.¹¹⁸ The city council must call each public hearing on the proposed annexation and cause a copy of the notice of the hearing to be posted on the city’s website and published in the newspaper.¹¹⁹ 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.¹²⁰ At least one of the hearings must be held in the annexation area if a suitable site is reasonably available and more than 10 percent of the permanent residents of the area file a written protest of the annexation with the city secretary within 10 days after the date of the publication of the hearing notice.¹²¹

Home rule cities must also publish the hearing notice “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.”¹²² Given the fact that annexation no longer automatically expands a city’s ETJ, whether this notice is truly required anymore is an open question.¹²³

Timing of Hearings: There is no statutory requirement that the hearings be held on separate days or have a certain amount of time in between them. A city may choose to expedite the process by publishing the notice of the hearings simultaneously and/or holding the hearings close together so long as the statutory notice posting, publication, and mailing timeframes are followed.¹²⁴

Notice to School Districts, Public Entities, Railroads, Utilities, and Residents:

The city must also give written notice to any school district and “public entity” that provides service in the area¹²⁵ and must provide written notice by certified mail to each railroad company with right-of-way in the annexation area¹²⁶ and each utility service provider that provides service in the annexation area.¹²⁷

¹¹⁸ *Id.*; *Jimenez v. City of Aransas Pass*, No. 13-17-00514-CV, 2018 WL 6565090, at *3 (Tex. App. Dec. 13, 2018). (noting that the date of the “institution of proceedings” is the date the annexation ordinance is introduced on first reading; therefore, if a city requires only one reading of an ordinance, the proceedings are instituted and completed at the same time).

¹¹⁹ Tex. Loc. Gov’t Code §§ 43.0561(c), 43.063(d).

¹²⁰ *Id.* §§ 43.0561(d), 43.063(d).

¹²¹ *Id.* § 43.063(b)

¹²² *Id.* § 43.0561(e)

¹²³ *Id.* § 42.021(e)

¹²⁴ See *Woodruff v. City of Laredo*, 686 S.W.2d 692, 696 (Tex. App. San Antonio 1985, writ ref’d n.r.e.).

¹²⁵ Tex. Loc. Gov’t Code §§ 43.905, 43.9051

¹²⁶ *Id.* §§ 43.0561(f)(2), 43.063(f)

¹²⁷ *Id.* § 43.0561(f)(1)

If a city proposes to annex an area with fewer than 100 separate tracts of land, where each tract has one or more residential dwellings, the city must send written notice of its intent to annex the area at least 30 days before the first public hearing to property owners and certain public and private entities providing services in the annexation area.¹²⁸

Annexation must be Completed within 90 days of Initiation

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.¹²⁹ Cities with additional charter requirements must be diligent to make sure the annexation ordinance is finally passed within 90 days of the first reading.¹³⁰

Finally, the city council, acting at a meeting that is separated by the appropriate time period from the two required hearings, must adopt an ordinance annexing the tract and approving the service plan for the tract.¹³¹ 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.¹³²

2.2.2.3 Specific Annexation Procedures by Area Classification:

Enclaves:

What is an enclave?

An enclave is an isolated portion of one entity's area that is surrounded by another entity.¹³³ A famous example of an enclave is Vatican City, which is a sovereign micro-state surrounded entirely by the city of Rome in the nation of Italy.

What are the procedures to annex enclaves in Texas?

Certain enclaves located in Tarrant County, Texas may be annexed using the consent-exempt annexation provisions detailed above.¹³⁴

¹²⁸ *Id.* § 43.062(b) (noting that “public entity” includes any: city; county; fire protection service provider, including a volunteer fire department; EMS provider, including a volunteer EMS provider; municipal utility district; water control and improvement district; or other district created under certain sections of the Texas Constitution; and each railroad company that serves the city and is on the city's tax rolls if the railroad company's right-of-way is in the annexation area).

¹²⁹ *Id.* § 43.064

¹³⁰ *Knapp v. City of El Paso*, 586 S.W.2d 216, 218 (Tex. App. - El Paso 1979, writ ref'd n.r.e.).

¹³¹ Tex. Loc. Gov't Code § 43.056(j)

¹³² *Id.* § 43.056(k)

¹³³ ENCLAVE, Black's Law Dictionary (12th ed. 2024)

¹³⁴ Tex. Loc. Gov't Code § 43.0115 (Tarrant County is home to the majority of the populations of Arlington and Fort Worth, both cities with more than 300,000 population.)

Industrial Districts:

What is an industrial district?

For purposes of consent-exempt annexations, an “industrial district” is an area within a city’s extraterritorial jurisdiction that is designated for industrial activities, and sometimes includes tourist-related businesses.¹³⁵ The city’s governing body can create these districts and enter into agreements with landowners in the district.¹³⁶ These agreements can guarantee that the area will not be annexed by the city for up to 15 years and may include other mutually agreed terms that support business operations.¹³⁷ The agreements can be renewed for additional 15-year periods.¹³⁸ Cities may also arrange for fire-fighting services in these districts, either by providing the services themselves or through contracts, and property owners who provide their own fire-fighting services are not required to pay for municipal fire services provided to others in the district.¹³⁹

What are the procedures to annex an industrial district?

A city may annex an industrial district using the consent-exempt procedures above;¹⁴⁰ however, if the annexation area in an industrial district is subject to an industrial district agreement as described above, the city may initiate the annexation only: (1) on or after the date the agreement expires; or (2) under the terms of the agreement.¹⁴¹

Area Owned by a Type A General-Law City:

What are the procedures for a Type A general-law city to annex area it owns?

The governing body of a Type A general-law city may annex an area owned by the city using the consent-exempt procedures above.¹⁴² The ordinance annexing the area must: (1) describe the area by metes and bounds; and (2) be entered into the minutes of the governing body.¹⁴³ Annexation of property owned by a city that contiguous to other territory within the city does not expand the city’s ETJ.¹⁴⁴

¹³⁵ *Id.* § 42.044(a)

¹³⁶ *Id.* § 43.065(b), (c)

¹³⁷ *Id.* § 43.065(c)

¹³⁸ *Id.* § 43.065(d)

¹³⁹ *Id.* § 43.065(e), (f)

¹⁴⁰ *Id.* § 43.0116(a)

¹⁴¹ *Id.* § 43.0116(b)

¹⁴² *Id.* § 43.012

¹⁴³ *Id.*

¹⁴⁴ *Id.* § 42.0225 (noting that this statute has been a part of the code since at least 1999)

Navigable Stream:

What is a navigable stream?

Statutorily, a “navigable stream” is stream is defined to be a stream which retains an average width of 30 feet from the mouth up.¹⁴⁵ A “stream” consists of the bed, the banks, and the stream of flowing water.¹⁴⁶ When there is a question whether a particular stream is “navigable,” the question is determined by courts as a matter of law.¹⁴⁷

What are the procedures to annex a navigable stream?

A city may annex a navigable stream adjacent to the city and within the city’s ETJ using the consent-exempt procedures above.¹⁴⁸

Area Subject to a Strategic Partnership Agreement:

What is a Strategic Partnership Agreement?

A Strategic Partnership Agreement (SPA) is a specific type of statutorily defined written agreement between a city and certain types of districts.¹⁴⁹ In fact, a city may not annex a district for limited purposes without a SPA in place.¹⁵⁰

What is a “district?”

“District” means any district or authority created pursuant to certain sections of the Texas Constitution, regardless of how created.¹⁵¹ Although practitioners often focus solely on Municipal Utility Districts when considering Strategic Partnership Agreements, SPAs can actually be applied to a variety of different types of districts, including Municipal Utility Districts,¹⁵² Water Control and Improvement Districts,¹⁵³ Water Improvement Districts,¹⁵⁴ Drainage Districts,¹⁵⁵ Levee Improvement Districts,¹⁵⁶ Irrigation Districts,¹⁵⁷ certain Regional Districts,¹⁵⁸ Special Utility Districts,¹⁵⁹ and Storm Control Districts.¹⁶⁰ The term “district” does not include any

¹⁴⁵ Tex. Nat. Res. Code § 21.001(3)

¹⁴⁶ *Motl v. Boyd*, 116 Tex. 82, 108, 286 S.W. 458, 467 (1926)

¹⁴⁷ *State v. Bradford*, 121 Tex. 515, 531, 50 S.W.2d 1065, 1070 (1932)

¹⁴⁸ Tex. Loc. Gov’t Code § 43.013

¹⁴⁹ *Id.* § 43.0751(b)

¹⁵⁰ *Id.* § 43.0751(e)

¹⁵¹ *Id.* § 43.0751(a)(1); Tex. Water Code § 49.001(a)(1).

¹⁵² Tex. Water Code § 54.011

¹⁵³ *Id.* § 51.011

¹⁵⁴ *Id.* § 55.011

¹⁵⁵ *Id.* § 56.011

¹⁵⁶ *Id.* § 57.011

¹⁵⁷ *Id.* § 58.011

¹⁵⁸ *Id.* § 59.001 (Applies in Harris County and counties bordering Harris County.)

¹⁵⁹ *Id.* § 65.011

¹⁶⁰ *Id.* § 66.011

navigation district or port authority created under general or special law, or certain conservation and reclamation districts.¹⁶¹ These types of districts are generally involved in managing resources like water and land. Additionally, a “limited district” is one which continues to operate after a city fully annexes it under the terms of a SPA.¹⁶²

May a Strategic Partnership Agreement provide for annexation of the district?

Yes. A SPA may provide for limited-purpose and/or full-purpose annexation of a district or portions of a district in certain circumstances and without obtaining the consent of the residents as detailed above.¹⁶³ (Note that there is a specific exception requiring consent for a city that operates a water utility and is annexing a certain size municipal utility district under a SPA.¹⁶⁴)

Additionally, a SPA may provide for:

- Full-purpose annexation of the district.¹⁶⁵ On the full-purpose annexation conversion date specified in the SPA, the land within the district automatically becomes part of the city’s full-purpose boundaries, without requiring any additional city action. This conversion date can only be changed by mutual agreement of the parties; however, the city has the right to end the agreement and start the annexation process earlier if the district’s governing body requests it, following the procedures outlined in Subchapter C-1.¹⁶⁶
- Full-purpose annexation of any commercial property in a district without the requirement to fully annex the residential areas.¹⁶⁷ The city would be obligated to make full provision of municipal services to the annexed commercial territory,¹⁶⁸ and the scope of the municipal services to be provided would be governed by the service plan, discussed briefly above in Section 2.2.2.2.

¹⁶¹ *Id.* § 49.001(a)(1) (Excludes from “district”: (1) the North Texas Municipal Water District, created pursuant to Chapter 62, Acts of the 52nd Legislature, 1951 (Article 8280-141, Vernon's Texas Civil Statutes), or (2) any conservation and reclamation district governed by Chapter 36, Texas Water Code, unless a special law creating the district or amending the law creating the district states otherwise.)

¹⁶² Tex. Loc. Gov’t Code § 43.0751(a)(2)

¹⁶³ *Id.* § 43.0751(s)

¹⁶⁴ *Id.* § 43.083 (This section applies to cities that operate their own water utility and have a SPA with a municipal utility district that involves plans to annex 400 or more water or wastewater connections that are outside the district. If the city is required or authorized to annex the district for full purposes under the SPA, it cannot annex the district without also annexing all unincorporated areas served by the district that are within the city’s ETJ, and the city must obtain approval for these annexations as required by Subchapter C-3, C-4, or C-5 before proceeding.)

¹⁶⁵ *Id.* § 43.0751(f)(5)

¹⁶⁶ *Id.* § 43.0751(h)

¹⁶⁷ *Id.* § 43.0751(f)(4)

¹⁶⁸ *Id.* (Services may be provided either directly by the city or via agreement with another governmental entity.)

- Limited-purpose annexation of a district, provided that the district shall continue in existence during the period of limited-purpose annexation.¹⁶⁹ Limited-purpose annexations are permitted only for areas of a district located in the city’s ETJ.¹⁷⁰
- Conversion of the district to a “limited district.”¹⁷¹ A SPA that provides for the creation of a limited district must include other specific terms.¹⁷²
- Payments by the city to the district for services provided by the district.¹⁷³
- Continuation and/or modification of agreements already in existence when SPA negotiation begins.¹⁷⁴
- Restrictions on the district from incurring new debt or liabilities, constructing additional utility facilities, or transferring property without the city’s approval.¹⁷⁵
- Any other lawful terms the parties consider appropriate.¹⁷⁶

A SPA cannot require the district to provide revenue to the city solely to avoid annexation and must provide fair and equitable benefits to both parties.¹⁷⁷

Do members of the public have input on the terms of a SPA?

Yes. Before adopting an SPA, both the city and the district must hold two public hearings to allow the public to present testimony or evidence about the proposed agreement.¹⁷⁸ The city must publish a notice of the hearings in a newspaper of general circulation in the city and the district.¹⁷⁹ This notice must be published at least once 20 days before each hearing. The notice must include the purpose, date, time, and place of the hearing, and where the proposed agreement can be obtained;

¹⁶⁹ *Id.* § 43.0751(f)(1), (2) (noting that cities in Harris County have more restrictions associated with SPAs providing for limited-purpose annexation), (n) (cities in Galveston County may impose sales and use tax and hotel occupancy taxes on limited districts in certain circumstances).

¹⁷⁰ *Id.* § 43.0751(r)(1)

¹⁷¹ *Id.* § 43.0751(f)(6)

¹⁷² *Id.* § 43.0751(g)

¹⁷³ *Id.* § 43.0751(f)(3)

¹⁷⁴ *Id.* § 43.0751(f)(7)

¹⁷⁵ *Id.* § 43.0751(i)

¹⁷⁶ *Id.* § 43.0751(f)(8)

¹⁷⁷ *Id.* § 43.0751(p)

¹⁷⁸ *Id.* § 43.0751(d)

¹⁷⁹ *Id.* § 43.0751(d) (Note that the district has a different obligation with regard to giving notice, and notice of public hearings conducted by the governing body of a district under this subsection must be given in accordance with the district's notification procedures for other matters of public importance.)

additionally, the notice must be published in a certain format.¹⁸⁰ Joint public hearings can be held by the city and the district, but at least one hearing must take place within the district.¹⁸¹

When is a SPA effective?

The SPA is only effective once it has been adopted by both the city and the district,¹⁸² and the city may not adopt the SPA until the district has done so.¹⁸³ The agreement must be recorded in the deed records of the county where the district is located and is binding on all current and future landowners within the district's boundaries at the time the agreement takes effect.¹⁸⁴

Can residents in an area annexed for limited purposes participate in city elections?

Yes, they can, but not in every type of election. Residents of an area annexed for limited purposes can vote in city elections related to electing or recalling members of the city council, electing or recalling the city controller (if the controller is an elected position), and amending the city charter. However, they are not allowed to vote in bond elections.¹⁸⁵ Additionally, residents of areas annexed for limited purposes cannot run for or be elected to city office.¹⁸⁶

Municipally Owned Reservoir:

What is a reservoir?

While there is no explicit definition of “municipal reservoir” in Texas statute or caselaw, there are examples from various cases that describe the use and establishment of reservoirs of by cities in Texas.¹⁸⁷ A municipal reservoir is a large, artificial or natural body of water that is owned and managed by a city. It is primarily used to store and supply water for public consumption, including drinking water, irrigation, and other municipal needs. In addition to water supply, municipal reservoirs may also support recreational activities like fishing, boating, and hiking. Note that not all water reservoirs used to supply cities with water are “municipal

¹⁸⁰ *Id.* §§ 43.0751(d), 43.123(b) (The notice may not be smaller than one-quarter page of a standard-size or tabloid-size newspaper, and the headline on the notice must be in 18-point or larger type.)

¹⁸¹ *Id.* § 43.0751(d)

¹⁸² *Id.* § 43.0751(c)

¹⁸³ *Id.* § 43.0751(e)

¹⁸⁴ *Id.* §§ 43.0751(c), 43.0751(e) (Note that the city may not adopt the SPA until after the district has done so.)

¹⁸⁵ *Id.* § 43.130(a) (the city is also obligated to inform these residents of their voting rights prior to the first election in the district).

¹⁸⁶ *Id.* § 43.130(b)

¹⁸⁷ See *Wasson Interests, Ltd. v. City of Jacksonville*, 513 S.W.3d 217, 219 (Tex. App.—Tyler 2016), rev'd, 559 S.W.3d 142 (Tex. 2018) (summarizing the city's creation, regulation, and maintenance of Lake Jackson beginning in the 1950s and continuing to the present)

reservoirs” under this definition.¹⁸⁸

What are the procedures to annex a municipally owned reservoir?

A general-law city may annex a municipally owned reservoir that is used to supply water to the city along with certain land contiguous to the reservoir and the right-of-way of any public road or highway connecting the reservoir to the city by the most direct route using the consent-exempt procedures detailed above.¹⁸⁹ The entire annexation area must: (1) be within five miles of the city limits; (2) not be in the ETJ of another city; and (3) be less than 600 acres, exclusive of the right-of-way.¹⁹⁰ These annexations are exempt from certain other requirements including minimum width requirements and the requirement for the tract to be located in the city’s ETJ.¹⁹¹

Municipally Owned Airport:

What are the procedures to annex a municipally owned airport?

A city may annex a municipally owned airport along with the right-of-way of any public road or highway connecting the reservoir to the city by the most direct route using the consent-exempt procedures detailed above if there are no owners of the area other than the city or the residents of the area.¹⁹² The city may annex the area if: (1) none of the area is more than eight miles from the city’s limits, and (2) each city in whose ETJ the airport is located agrees to the annexation.¹⁹³ These annexations are exempt from certain other requirements including minimum width requirements, the requirement for the tract to be located in the city’s ETJ, and the requirement that the tract not be located in the ETJ of another city.¹⁹⁴

Road Rights-of-Way:

What are the procedures to annex a road right-of-way?

A city may annex a road right-of-way following the consent-exempt procedures above if: (1) either the owner of the right-of-way or the governmental body that maintains the right-of-way requests the annexation in writing, or (2) under certain circumstances where the right-of-way makes a connection between the city limits

¹⁸⁸ See *City of San Antonio v. Texas Water Comm’n*, 407 S.W.2d 752, 754–55, 757 (Tex. 1966) (discussing how the Canyon Dam Reservoir, while serving as a potential water source for cities such as San Antonio, is owned and operated by the Guadalupe-Blanco River Authority, a regional water authority, rather than a city, and was regulated at the time by the Texas Water Commission, the predecessor to the Texas Commission on Environmental Quality); U.S. Army Corps of Engineers website regarding Lake Sam Rayburn, which is one of 25 reservoirs managed by the Corps in Texas, at <https://www.swf-wc.usace.army.mil/samray/> (last accessed Aug. 15, 2024).

¹⁸⁹ Tex. Loc. Gov’t Code § 43.101(a)

¹⁹⁰ *Id.* § 43.101(b)

¹⁹¹ *Id.* § 43.101(d)

¹⁹² *Id.* § 43.102(a), (c)

¹⁹³ *Id.* § 43.102(b)

¹⁹⁴ *Id.* § 43.102(d)

and an area being simultaneously annexed by the city.¹⁹⁵ If the owner or governmental body that maintains the right-of-way does not make a written request for the city to annex the right-of-way, the city must provide written notice of the annexation to the owner the governing body that maintains the right-of-way not later than the 61st day before the date of the proposed annexation. If the owner or the political subdivision that maintains the right-of-way does not submit a written objection to the city before the date of the proposed annexation, then the city may annex the right-of-way.¹⁹⁶ These annexations are exempt from minimum width requirements.¹⁹⁷

¹⁹⁵ *Id.* § 43.1055(a), (b), (c)(1)

¹⁹⁶ *Id.* § 43.1055(c)

¹⁹⁷ *Id.* § 43.1055(e)

2.2.3 Annexation by ETJ Development Agreement

What is an ETJ Development Agreement?

An ETJ Development Agreement (DA) is a specific type of contract between a city¹⁹⁸ and an owner of land located in the city's ETJ which may, among other things:

- Ensure the land remains outside the city limits and protected from annexation.
- Allow the city to extend its planning authority by approving a development plan created by the landowner, outlining general land uses and development.
- Permit the city to enforce certain land use and development regulations on the land as it would within city limits.
- Allow the city to enforce additional land use and development regulations as agreed upon by the landowner and the city.
- Provide infrastructure for the land, including streets, drainage, and utility systems (water, wastewater, etc.).
- Enable the city to enforce environmental regulations.
- Provide for the annexation of the land, either in full or in parts, and to provide the terms of the annexation.
- Specify land uses and development both before and after annexation, if annexation is agreed upon.
- Include any other lawful terms and conditions agreed upon by the parties.¹⁹⁹

DAs can be used by cities as an alternative to annexing land on which new residential development is planned or as a precursor to later annexation. The agreements allow a city to provide for sustainable residential development by managing lot size and density, infrastructure quality, and other matters.

What are the required elements of a DA?

To be binding on the parties, several requirements must be met. In fact, before offering a DA to a landowner, the city must make certain written disclosures including specific information such as the landowner's right to refuse the agreement, pertinent annexation-related statutes, and the city's waiver of immunity to suit.²⁰⁰ Failure to provide these disclosures voids the agreement.²⁰¹ The agreement itself must be in writing and contain an adequate legal description of the land involved.²⁰² Additionally, the agreement must be approved by the city's governing body and the landowner and be recorded in the real property records of each county in which any part of the land subject to the DA is located.²⁰³ The total term of the contract, including any renewals, is limited to 45 years.²⁰⁴

¹⁹⁸ *Id.* § 212.171 (noting that Houston may not enter ETJ development agreements)

¹⁹⁹ *Id.* § 212.172(b)

²⁰⁰ *Id.* § 212.172(b-1)

²⁰¹ *Id.* § 212.172(b-2)

²⁰² *Id.* § 212.172(c)(1), (2)

²⁰³ *Id.* § 212.172(c)(3), (4)

²⁰⁴ *Id.* § 212.172(d)

May an ETJ Development Agreement Provide for Annexation?

Yes. An ETJ Development Agreement may provide for annexation and provide for the terms of annexation.²⁰⁵ Essentially, a landowner and a city may craft their own unique annexation process applicable to the land using a DA.

²⁰⁵ *Id.* § 212.172(b)(7)

2.3 Post-Annexation Requirements

Regardless of the process used to annex property, the process does not end with passage of the annexation ordinance. Depending on the circumstances, the city may have several more tasks to accomplish before all is complete, as detailed below.

Map Updates:

Cities are required to prepare a map that shows the boundaries of the city and its ETJ.²⁰⁶ A copy of the map must be kept in the offices of the city secretary and the city engineer and posted on the city's website.²⁰⁷ If a city annexes territory, the map shall be immediately corrected to include the annexed territory and note the following: (1) the date of annexation; (2) the number of the annexation ordinance; and (3) a reference to the minutes or ordinance records where the ordinance is recorded in full.²⁰⁸ The same map updates must be made when a city expands or reduces its ETJ.²⁰⁹

Filing with County Clerk:

There is a statute that requires cities, following an annexation or disannexation, to file documents showing the change in boundaries with the applicable county clerk(s), "within 30 days after the date of preclearance under Section 5, Federal Voting Rights Act."²¹⁰ In 2013, the Supreme Court of the United States rendered this preclearance requirement inoperative, and Congress has not taken action to reinstate the requirements.²¹¹ Even though preclearance is no longer required, an abundance of caution could lead a city to continue filing annexation ordinances with the county clerk's office.

Notice to County Appraisal District:

If a city is a taxing unit that imposes ad valorem taxes within an appraisal district, the city must notify the appraisal office within 30 days after the city's boundaries are altered.²¹²

Notice to the Texas Comptroller:

Notice of annexations must 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 the change in boundaries, with the annexed portion clearly distinguished, resulting from the annexation.²¹³ The Sales Tax Division of the comptroller's office may be reached at 800-252-5555 or <http://comptroller.texas.gov>.

²⁰⁶ *Id.* § 41.001(a)

²⁰⁷ *Id.* § 41.001(a)

²⁰⁸ *Id.* § 41.001(b)

²⁰⁹ *Id.* § 41.001(c)

²¹⁰ *Id.* § 41.0015(a)

²¹¹ *Shelby Cnty., Ala. v. Holder*, 570 U.S. 529, 557, 133 S. Ct. 2612, 2631, 186 L. Ed. 2d 651 (2013)

²¹² Tex. Tax Code § 6.07

²¹³ *Id.* § 321.102(b)

Notice to Utility and Other Service Providers:

Telephone and Certain Telecommunications Providers: Certificated Telecommunications Providers (CTPs) that use city rights-of-way make quarterly based on the number of “access lines” located in a city.²¹⁴ When a city annexes territory, the newly included area may have access lines. While neither Chapter 283 nor the rules adopted by the Texas Public Utility Commission (PUC) directly address this situation, in order for a city to be properly compensated for the inclusion of the access lines, the city should notify any CTPs that may be providing service in the current city limits that, if the CTP also has access lines in the newly-annexed area, it must begin compensating the city accordingly. In addition, if a city is aware of other CTPs that may be operating in the area, it should notify those as well. Finally, the city should also notify the PUC so that the information can be posted on the PUC’s website.

Electric: After annexing new territory, a city should contact the electric provider in the area to determine whether adjustment to the existing, or a new, franchise agreement is necessary.²¹⁵

Cable and Video: Cable and video providers pay fees to each city in which they provide cable or video service for use of the public right-of-way.²¹⁶ Those providers, and the PUC, should be notified of an annexation to ensure proper reporting.

Gas, Water, or Other Users of Right-of-Way: Retail gas and water companies often pay franchise fees to cities and should be notified as well.

²¹⁴ Tex. Loc. Gov’t Code ch. 238

²¹⁵ Tex. Util. Code § 33.008 (authorizing franchise fees)

²¹⁶ *Id.* § 66.005 (authorizing franchise fees)

3.0 DISANNEXATION FROM THE MUNICIPAL BOUNDARIES

What is “disannexation?”

“Disannexation” is essentially the reverse action of annexation and is the release of territory from a city’s jurisdiction. Below are the statutory mechanisms which allow for disannexation. If a requested or desired disannexation does not fit within one of these provisions, it is likely prohibited.²¹⁷

3.1 Methods of Disannexation

Disannexation for Failure of the City to Provide Services:²¹⁸

If a city fails to provide the services promised in a service plan or written agreement to an annexed area within the agreed timelines, the majority of the area’s qualified voters can petition the governing body to disannex the area.²¹⁹ The petition must be a written request for the disannexation and must include signatures from the appropriate voters, each signed in ink or indelible pencil.²²⁰ The signatures must match the names as they appear on the most recent official voter registration list, and each voter must also include their residence address, precinct number, and voter registration number as shown on their voter registration certificate.²²¹ The petition must describe the area to be disannexed, with a plat or similar depiction of the area attached, and it must be presented to the city secretary.²²² 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.²²³ 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.²²⁴ An area that has been disannexed under these provisions may not be annexed again within 10 years after the date of the disannexation.²²⁵

²¹⁷ See Tex. Loc. Gov’t Code §§ 43.145, 43.1465 (noting that these sections allow for disannexation in two other, highly-specific instances and for “defunding” cities, provisions which are inapplicable to most cities)

²¹⁸ *Alexander Oil co. v. City of Seguin*, 825 S.W.2d 434, 437 (Tex. 1991) (noting that disannexation is the only express remedy for failure to provide services under a plan).

²¹⁹ Tex. Loc. Gov’t Code § 43.141(a)

²²⁰ *Id.* § 43.141(d)

²²¹ *Id.*

²²² *Id.*

²²³ *Id.* § 43.141(b)

²²⁴ *Id.*

²²⁵ *Id.* § 43.141(c)

Home Rule Disannexation According to Charter:

A home rule city may disannex an area according to rules provided by its charter and not inconsistent with the procedural rules prescribed by state law.²²⁶ The section is permissive and does not mandate disannexation in most cases. A court has determined that in a home rule city that allows initiative or referendum processes by charter, these provisions may not be used to disannex property from a city.²²⁷

Disannexation by Election in a General-Law City

A general-law city must call an election on the question of disannexation of an area, if a sufficient petition is filed with the city.²²⁸ The petition requesting that the area no longer be a part of the city must be signed by at least 50 qualified voters of the area and presented to the mayor.²²⁹ The requirements of Chapter 277 of the Texas Election Code apply to the petition; therefore, each petition signature must be accompanied by: (1) the signer's printed name; (2) the signer's: (i) date of birth; or (ii) voter registration number and, if the territory from which signatures must be obtained is situated in more than one county, the county of registration; (3) the signer's residence address; and (4) the date of signing. .²³⁰ All signatures must be collected in the 180 days before the date the petition is filed with the city.²³¹ In addition to the signatures, the petition must also include a description of the area proposed for disannexation by metes and bounds. If a sufficient petition is presented, the city 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.²³²

If the majority of votes are cast in favor of disannexation, the city 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.²³³ 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.²³⁴ 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.²³⁵

²²⁶ *Id.* § 43.142

²²⁷ *City of Hitchcock v. Longmire*, 572 S.W.2d 122 (Tex. App.—Houston [1st Dist.] 1978, writ ref'd n.r.e.) (plaintiffs in the case attempted to repeal an annexation ordinance by referendum).

²²⁸ Tex. Loc. Gov't Code § 43.143

²²⁹ *Id.* § 43.143(a)

²³⁰ Tex. Elec. Code § 277.002

²³¹ *Id.* § 277.002(e)

²³² Tex. Loc. Gov't Code § 43.143(a)

²³³ *Id.* § 43.143(b)

²³⁴ *Id.*

²³⁵ Tex. Loc. Gov't Code § 43.143(c)

Disannexation of Sparsely Populated Area in a General-Law City

The governing body of a general-law city may by ordinance disannex an area as part of the city if: (1) the area consists of at least 10 acres contiguous to the city; and (2) the area (i) is uninhabited; or (ii) 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.²³⁶

3.2 Additional Disannexation Considerations

Refund of Taxes and Fees

If an area is disannexed, the city must refund to the landowners the amount of money collected in property taxes and fees from those landowners 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 same period.²³⁷ Refunds that are not paid within 180 days after the area is disannexed accrue interest at a statutory rate.²³⁸

Width Requirements for Roadway Disannexation:

When a city disannexes a road or highway, it must also disannex a strip of land with a width at its narrowest point being at least 1,000 feet, unless the disannexation is mutually agreed upon by the county and the city.²³⁹ The strip of land to be disannexed must be adjacent to either side of the road or highway and must follow the course of the road or highway.²⁴⁰

The Post-Annexation Requirements Apply to Disannexations:

The map updates, notices to taxing authorities, and other notices the city must or should send following annexation of property also apply to disannexation of property. See Section 2.3, above, for those details.

²³⁶ *Id.* § 43.144(a)

²³⁷ *Id.* § 43.148(a)

²³⁸ *Id.* § 43.148(b)

²³⁹ *Id.* § 43.147(a)

²⁴⁰ *Id.* § 43.147(b)

4.0 EXPANSION AND REDUCTION OF THE ETJ

4.1 No Automatic ETJ Expansion

Does annexation of property into the city’s corporate boundaries automatically expand or extend the city’s ETJ?

Not anymore, and the statutory language is confusing. State law still provides the following:

When a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries.²⁴¹

That language, standing alone, could lead one to believe that the ETJ does, in fact, expand when new territory is annexed into the city. However, the phrase “consistent with Section 42.021” is critical, because that section contains the following provision:

An annexation commenced after January 1, 2023, **does not expand the extraterritorial jurisdiction of a municipality** unless contemporaneously with the annexation the owner or owners of the area that would be included in the municipality's extraterritorial jurisdiction as a result of the annexation request that the area be included in the municipality’s extraterritorial jurisdiction.²⁴²

Unless residents in the unincorporated portion of the county request annexation into the city’s ETJ, the ETJ does not expand following the annexation of property into a city. Previously the ETJ would automatically expand following the annexation of property into a city, but the law changed in 2023.²⁴³

4.2 ETJ Expansion by Landowner Request

Can property be added to a city’s ETJ?

Yes. Property which is contiguous to a city’s ETJ may be added to the ETJ if the owners request the expansion.²⁴⁴ Additionally, as shown in Table 2, above, the size of a city’s ETJ depends heavily on the city’s population and continues to expand automatically

²⁴¹ *Id.* § 42.022(a)

²⁴² *Id.* § 42.021(e)

²⁴³ S.B. 2038, 88th Leg., Reg. Sess. § 2 (Tex. 2023)

²⁴⁴ Tex. Loc. Gov’t Code § 42.022(b)

until it reaches five miles at a population of 100,000.²⁴⁵ Note that there are limitations on this expansion. Simply because a city hits a certain population threshold, its ETJ may not expand to the statutory limit, because expansion of a city’s ETJ cannot include any area in an existing ETJ of another city without agreement of that city.²⁴⁶ That said, a city’s ETJ may be expanded through annexation to include an area located in the ETJ of another city if a written agreement between the cities allocates the area to the annexing city.²⁴⁷ Remember, of course, that the only way ETJ expands through annexation is through a contemporaneous request of the landowner to annex into the city’s ETJ.²⁴⁸

4.3 ETJ Reduction by City Action

Can a city take action to reduce its ETJ?

Yes. A city council may reduce the city’s ETJ by giving its written consent by ordinance or resolution.²⁴⁹ In fact, the statute reads that, “[t]he extraterritorial jurisdiction of a municipality **may not be reduced unless** the governing body of the municipality gives its written consent by ordinance or resolution (emphasis added)” except in three listed circumstances.²⁵⁰

4.4 ETJ Reduction by Landowner Action

Can ETJ landowners have their property released from the ETJ?

Perhaps.²⁵¹ Residents and landowners in a city’s ETJ may seek to have an area of land released from the city’s ETJ through a petition process.²⁵² ETJ residents may also seek release through an election.²⁵³ The petition and election process are detailed below. Recall from Section 4.3, above, however, that a city’s ETJ may not be reduced without specific council action, which raises questions around whether property owners acting alone may remove their property from a city’s ETJ.

Are any types of ETJ property exempt from release?

Yes. Areas in the following locations are exempt from release through these processes:

- Areas within 5 miles of an active military base;
- Areas that were voluntarily annexed into the ETJ of a city in Hays County,

²⁴⁵ *Id.* § 42.021

²⁴⁶ *Id.* § 42.022(c)

²⁴⁷ *Id.* § 42.022(d)

²⁴⁸ *Id.* § 42.021(e)

²⁴⁹ *Id.* § 42.023

²⁵⁰ *Id.*

²⁵¹ As of September 2024, the processes outlined in this Section 4.4 are currently being challenged in ongoing litigation, raising important questions regarding their validity, applicability, and legal effect.

²⁵² Tex. Loc. Gov’t Code § 42.102

²⁵³ *Id.* § 42.152(a)

- Texas;
- Areas located in the ETJ of either San Antonio or Houston that are (1) also located in Harris or Bexar Counties, and (2) within 15 miles of an active military base;
- Areas designated as an industrial district; and
- Areas subject to a Strategic Partnership Agreement.²⁵⁴

4.4.1 Reduction by Petition

Who is authorized to file a petition seeking release from an ETJ?

A resident of an area in a city’s ETJ may file a petition with the city to be released.²⁵⁵ Likewise, the owner or owners of the majority in value of an area consisting of one or more parcels of land in a city’s ETJ may file a petition.²⁵⁶ A “parcel” of land, while also undefined in Texas statute, typically refers to a defined area of land by reference to specific details such as acreage, geographic location, survey details, lot numbers, block numbers, subdivision information, or tract names.²⁵⁷

What are the petition requirements?

A valid petition must be signed by either: (1) more than 50 percent of the registered voters of the area; or (2) a majority in value of the titleholders to land in the area.²⁵⁸ A valid signature must: (1) be in written in the signer’s handwriting;²⁵⁹ and (2) contain the signer’s: (a) printed name; (b) date of birth or voter registration number; (c) residence address; and (d) date of signing.²⁶⁰ Within 180 days after the first signature for the petition is obtained, all signatures must be collected and the petition must be filed with the city.²⁶¹ The petition must include a map of the area to be released and describe the area by either: (1) metes and bounds; or (2) lot and block number, if there is a recorded map or plat.²⁶² The petition must also comply with Chapter 277 of the Election Code,²⁶³ and home rule city charters may contain additional petition requirements.

What must a city do upon receipt of a petition?

When a petition is filed with a city, the city secretary or other person verifies the

²⁵⁴ *Id.* §§ 42.101, 42.151

²⁵⁵ *Id.* § 42.102(a)

²⁵⁶ *Id.* § 42.152(b)

²⁵⁷ See *Hays v. Butler*, 295 S.W.3d 53, 54 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (describing several parcels of property by acreage, block numbers, survey names, and recording information)

²⁵⁸ Tex. Loc. Gov’t Code § 42.104(a)

²⁵⁹ *Id.* § 42.104(c), Tex. Elec. Code § 277.002(b)

²⁶⁰ Tex. Elec. Code § 277.002(a)(1)

²⁶¹ Tex. Loc. Gov’t Code § 42.104(b), Tex. Elec. Code § 277.002(e)

²⁶² Tex. Loc. Gov’t Code § 42.104(d)

²⁶³ Tex. Loc. Gov’t Code § 42.103, Tex. Elec. Code § 277.001

signatures.²⁶⁴ The city must notify the residents and landowners of the described area whether or not the petition contains the required number of signatures for release.²⁶⁵ If the petition indeed contains the required number of signatures, the city is required to immediately release the area from its ETJ.²⁶⁶

Is there a deadline for the city to release the area after receiving a sufficient petition?

Yes. The city must take action to release the area by the later of: (1) the 45th day after the date the city receives the petition; or (2) the next meeting of the city council that occurs after the 30th day after the date the city receives the petition.²⁶⁷ If the city fails to take timely action, the area is released by operation of law.

May a released area be included in a city’s ETJ or corporate boundaries?

Not without the owner requesting inclusion. An area released from a city’s ETJ may not be included in the ETJ or corporate boundaries of a city unless the owner of the area later requests that the area be included.²⁶⁸

4.4.2 Reduction by Election

Who is authorized to request an election seeking release from an ETJ?

A resident of an area in the ETJ may request that the city hold an election on the question of whether to release the area from the ETJ.²⁶⁹

How does a resident make the request for the election?

By filing a petition. The resident makes the request for an election by filing a petition that includes the signatures of at least five percent of the registered voters residing in the area as of the date of the preceding uniform election date.²⁷⁰

What are the petition requirements?

As stated above, a valid petition must be signed by five percent of the registered voters residing in the area as of the date of the preceding uniform election date.²⁷¹ A valid signature must: (1) be in written in the signer’s handwriting;²⁷² and (2) contain the signer’s: (a) printed name; (b) date of birth or voter registration number; (c)

²⁶⁴ Tex. Loc. Gov’t Code § 42.105(a)

²⁶⁵ Tex. Loc. Gov’t Code § 42.105(b) (noting that this requirement may be satisfied by notifying the person who filed the petition)

²⁶⁶ *Id.* § 42.105(c)

²⁶⁷ *Id.* § 42.105(d)

²⁶⁸ *Id.* § 42.105(e)

²⁶⁹ *Id.* § 42.152(a)

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² Tex. Elec. Code § 277.002(b)

residence address; and (d) date of signing.²⁷³ Within 180 days after the first signature for the petition is obtained, all signatures must be collected and the petition must be filed with the city.²⁷⁴ The petition must include a map of the area to be released and describe the area by either: (1) metes and bounds; or (2) lot and block number, if there is a recorded map or plat.²⁷⁵ The petition must comply with Chapter 277 of the Election Code,²⁷⁶ and home rule city charters may contain additional petition requirements.

What must a city do upon receipt of a petition?

When a petition is filed with a city, the city secretary or other person verifies the signatures to determine whether the petition is sufficient to require an election. If the petition is sufficient, the city shall order an election on the question of whether to release the area on the first uniform election date after the 90th day following the petition's receipt.²⁷⁷ The election shall be held in the area described in the petition, and the qualified voters of that area may vote on the question of the release²⁷⁸ with the city paying the costs for the election.²⁷⁹ Alternatively, instead of holding an election, the city may voluntarily release the area any time before the date on which the election would have been held.²⁸⁰

What happens following the election?

The city must canvass the election, and within 48 hours after the canvass the city must notify the residents of the area of the results.²⁸¹ While the statute is unclear, this notification requirement appears to be in addition to other public notice a city might routinely give following an election canvass. This requirement may be met by notifying the person who filed the petition.²⁸² If a majority of the voters approved the proposed release, the city must release the area either: (1) at the next meeting of the city's governing body following the canvass; or (2) by the 15th day after the canvass.²⁸³

May a released area be included in a city's ETJ or corporate boundaries?

Not without the owner requesting inclusion. An area released from a city's ETJ may not be included in the ETJ or corporate boundaries of a city unless the owner of the area later requests that the area be included.²⁸⁴

²⁷³ *Id.* § 277.002(a)(1)

²⁷⁴ *Id.* § 277.002(e)

²⁷⁵ Tex. Loc. Gov't Code § 42.152(c)

²⁷⁶ Tex. Elec. Code § 277.001

²⁷⁷ Tex. Loc. Gov't Code § 42.153(a)

²⁷⁸ *Id.* § 42.153(b)

²⁷⁹ *Id.* § 42.153(c)

²⁸⁰ *Id.* § 42.156

²⁸¹ *Id.* § 42.154

²⁸² *Id.* § 42.154(b)

²⁸³ *Id.*

²⁸⁴ *Id.* § 42.105(e)

4.5 Post ETJ Disannexation Requirements

Map Updates Following ETJ Expansion or Reduction:

Cities are required to prepare a map that shows the boundaries of the city and its extraterritorial jurisdiction.²⁸⁵ A copy of the map must be kept in the offices of the city secretary and the city engineer and posted on the city's website.²⁸⁶ If a city's ETJ is expanded or reduced, the map shall be immediately corrected to include the annexed territory and note the following: (1) the date the city's ETJ was changed; (2) the number of the ordinance or resolution, if any, by which the change was made; and (3) a reference to the minutes or ordinance or resolution records where the ordinance or resolution is recorded in full.²⁸⁷

²⁸⁵ *Id.* § 41.001(a)

²⁸⁶ *Id.*

²⁸⁷ *Id.* § 41.001(c)

5.0 OTHER MATTERS AFFECTING ANNEXATION

5.1 Validation of City Action

A governmental act or proceeding of a city is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if: (1) three years have passed since the effective date of the act or proceeding; and (2) no lawsuit to annul or invalidate the act or proceeding has been filed in that timeframe.²⁸⁸ This validation statute can protect prior city actions from certain procedural missteps or mistakes; however, it does not validate acts or proceedings that were: (1) void at the time they occurred; (2) preempted by state or federal law; or (3) criminal acts.²⁸⁹ Additionally, ordinances defining boundaries of or annexing area to a city are conclusively presumed to have been adopted with the consent of all appropriate persons, except another city, if: (1) two years have expired after the date of the adoption of the ordinance; and (2) an action to annul or review the adoption of the ordinance has not been initiated in that two-year period.²⁹⁰ While validation may be protective against procedural defects and defects related to consent in an annexation, it may not be effective as a defense to an annexation or disannexation that is challenged for non-procedural reasons.²⁹¹

5.2 Challenges to Annexations

The remedies available to individuals wishing to challenge an annexation ordinance depend on whether the challenge is related to an issue or error within the annexation process or to a city's authority to annex the area at all. An annexation may be "voidable" when the city had the authority to annex, but procedural errors occurred during the process. In contrast, an annexation is considered "void" when the city lacks the legal authority to annex the area in question, making the ordinance invalid from the outset (void *ab initio*). Challenges to voidable and void annexations are discussed below.

Voidable Annexations:

If a city has the authority to annex, but fails to follow the proper annexation procedures, the annexation ordinance may be voidable, and the only mechanism to challenge the annexation is a *quo warranto* proceeding.²⁹² *Quo warranto*, meaning

²⁸⁸ *Id.* § 51.003(a)

²⁸⁹ *Id.* § 51.003(b)

²⁹⁰ *Id.* § 43.901

²⁹¹ See *City of Murphy v. City of Parker*, 932 S.W.2d 479 (Tex. 1996) (annexation was challenged as being void *ab initio* based on location of the annexed tract in another city's ETJ but was upheld based on prior validation language)

²⁹² See *May v. City of McKinney*, 479 S.W.2d 114, 120 (Tex. App.--Dallas 1972, writ ref'd n.r.e.); *City of Houston v. Harris County Eastex Oaks Water & Sewer Dist.*, 438 S.W.2d 941, 944 (Tex. App.--Houston [1st Dist.] 1969, writ ref'd n.r.e.); *City of Irving v. Callaway*, 363 S.W.2d 832, 834-35 (Tex. App.--Dallas 1962, writ ref'd n.r.e.); *Lefler v. City of Dallas*, 177 S.W.2d 231, 233-34 (Tex. App.--Dallas 1943, no writ); *Werthmann v. City of Fort Worth*, 121

“by what authority,” originates from English common law and is a legal remedy used by the state to determine whether a power or privilege has been exercised lawfully.²⁹³ State or local prosecutors are the agents of the state who bring *quo warranto* suits rather than individuals or other interested parties.²⁹⁴ The basis for requiring *quo warranto* proceedings is that a judgment in favor of or against a city affecting the public interest binds all citizens and taxpayers even though they were not parties to the suit.²⁹⁵

Void Annexations:

When an ordinance is claimed to be void, rather than merely voidable, a direct legal challenge is appropriate, as opposed to a *quo warranto* proceeding.²⁹⁶ An annexation ordinance is void *ab initio* if the city lacked the authority to annex the area in the first place. In such cases, a private party may challenge the annexation, but to establish standing, the party must demonstrate a unique burden specific to itself.²⁹⁷ The Texas Supreme Court has consistently held that annexation ordinances violating express statutory limits on a city’s authority are void.²⁹⁸ A private party may specifically seek declaratory judgment, mandamus, or injunctive relief to challenge an annexation that is void *ab initio*.²⁹⁹

S.W.3d 803, 807 (Tex. App.--Fort Worth 2003)(holding that the annexation plan requirement of Section 43.052 is procedural).

²⁹³ QUO WARRANTO, Black's Law Dictionary (12th ed. 2024); See also Tex. Civ. Prac. & Rem. Code §66.001.

²⁹⁴ Tex. Civ. Prac. & Rem. Code §66.002

²⁹⁵ See *Alexander Oil Co. v. City of Seguin*, 825 S.W.2d 434, 437 (Tex.1991).

²⁹⁶ *City of Willow Park v. Bryant*, 763 S.W.2d 506, 508 (Tex. App.—Forth Worth 1988, no writ) (holding annexation ordinance void).

²⁹⁷ *Alexander Oil Co.*, 825 S.W.2d at 438-39. See also *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 239-40 (Tex.App.-Corpus Christi 2005, no pet.) (It is true that a private citizen has standing to challenge a void annexation ordinance if the private citizen shows a special burden under the ordinance. And the showing of the potential imposition of a tax on the plaintiff has been held to satisfy the special burden requirement.); *Sunchase Capital Group, Inc. v. City of Crandall*, 69 S.W.3d 594 (Tex.App.-Tyler 2001); *City of Richmond v. Pecan Grove Mun. Util. Dist.*, No. 01-14-00932-CV, 2015 WL 4966879, at *1 (Tex. App. Aug. 20, 2015)(holding that a MUD did not have standing to challenge a city’s strip annexation through that MUD).

²⁹⁸ See, e.g., *City of West Orange v. State ex rel. City of Orange*, 613 S.W.2d 236, 238 (Tex.1981) (finding ordinance invalid because it purported to annex land not adjacent to city); *City of Waco v. City of McGregor*, 523 S.W.2d 649, 652 (Tex.1975) (opining that ordinance was "void when it was passed" because it attempted to annex territory in contravention of statutory provision); *City of Roanoke v. Town of Westlake*, 111 S.W.3d 617, 638 (Tex. App.—Fort Worth 2003) (finding that annexation by one city into another city’s ETJ was void because the first city was required to obtain the consent of the second); *City of West Lake Hills v. State ex rel. City of Austin*, 466 S.W.2d 722, 729-30 (Tex.1971) (holding that ordinances attempting to annex noncontiguous and nonadjacent land in violation of statute were invalid); *Deacon v. City of Euless*, 405 S.W.2d 59, 64 (Tex.1966) (declaring attempted annexation of territory “null and void” because it exceeded statutory size limitations); *City of Terrell v. Edmonds*, No. 05-19-01248-CV, 2020 WL 5361978 (Tex. App.—Dallas Sept. 8, 2020) (mem. op.).

²⁹⁹ Tex. Loc. Gov’t Code § 43.908; See *Laidlaw Waste Systems (Dallas) v. Wilmer*, 904 S.W.2d 656, 660-61 (Tex.1995); See also *City of Bridge City v. State ex rel. City of Port Arthur*, 792 S.W.2d 217 (Tex. App.--Beaumont 1990, writ denied).

5.3 City’s Motives for Annexation are Irrelevant

Courts generally have no authority to judicially review the reasons a city annexes property.³⁰⁰ Thus, the fact that a city annexes property solely for the purposes of raising tax revenue is immaterial to the validity of an annexation. Further, a property owner has no Fourteenth Amendment due process rights with respect to the location of city boundaries; therefore, a Constitutional challenge should not succeed.³⁰¹ For home rule cities, the Texas Constitution grants to the city council the authority to set city boundaries.³⁰² Note that this home rule authority is now limited by Chapter 43.

5.4 Area Receiving Longstanding Treatment as Part of a City

A city’s governing body can adopt an ordinance to officially include an adjacent area within the city’s boundaries if the following conditions are met:³⁰³

- 1) The records of the city indicate that the area has been a part of the city for at least the preceding 20 years;
- 2) The city has provided municipal services, including police protection, to the area and has otherwise treated the area as a part of the city during the preceding 20 years;
- 3) There has not been a final judicial determination during the preceding 20 years that the area is outside the boundaries of the city; and
- 4) There is no pending lawsuit that challenges the inclusion of the area as part of the city.³⁰⁴

Once the ordinance is adopted, it creates an indisputable presumption that the area is part of the city retroactive to the date the area began receiving treatment as part of the city, which cannot be challenged after the ordinance’s effective date.³⁰⁵ While this is not technically “annexation,” it feels appropriate to be included here. Additionally, a city exercising this authority would likely need to carry out all the post-annexation updates detailed in Section 2.3, above.

³⁰⁰ *State ex rel. Pan American Production Co. v. Texas City*, 303 S.W.2d 780, 782 (Tex. 1957).

³⁰¹ *State ex rel. Danner v. City of Watauga*, 676 S.W.2d 721 (Tex. App.--Fort Worth 1984, writ ref’d n.r.e.); *Superior Oil Co. v. City of Port Arthur*, 628 S.W.2d 94 (Tex.App.-Beaumont 1981, writ ref’d n.r.e.), *appeal dismissed*, 459 U.S. 802, 103 S.Ct. 25, 74 L.Ed.2d 40 (1982).

³⁰² *Winship v. City of Corpus Christi*, 373 S.W.2d 844, 848 (Tex. Civ. App. – Corpus Christi 1963), *writ refused NRE* (Apr. 22, 1964)(“Appellants’ contentions that the instant annexations amount to a taking of their properties without due process contrary to state and federal constitutional provisions are not supported by the record and are without merit. The questions as to what property shall be embraced within a municipal corporation and taxation of same for municipal purposes present questions essentially political and which by the Constitution are to be determined by the Legislature; and, particularly, as to extension of boundaries, by cities operating under the Home Rule Amendment. The constitutional inhibition against taking private property for public use without compensation has reference solely to the exercise of the right of eminent domain and not to taxation for public use.”)

³⁰³ Tex. Loc. Gov’t Code § 41.003(a)

³⁰⁴ *Id.* § 41.003(b)

³⁰⁵ *Id.* § 41.003(a)

5.5 Continuation of Prior Uses

After annexing an area, a city may not prohibit a person from continuing to use their land in the same way it was being used when the annexation process began, as long as the land use was legal at that time, with certain exceptions.³⁰⁶ Additionally, a city cannot stop a person from starting to use their land as planned before the 90th day prior to the annexation's effective date, provided that the planned use required permits or approvals from a government entity and that a complete application for these permits was submitted before the annexation process began.³⁰⁷ An application is considered complete if it includes all the necessary documents and information required by the government entity, as specified in a written notice to the applicant.³⁰⁸

This protection of existing uses does not prevent a city from imposing regulations related to certain specific issues, such as the location of sexually oriented businesses, public nuisances, flood control, and the storage and use of hazardous substances.³⁰⁹ It also allows cities to enforce ordinances affecting colonias and regulations to prevent imminent destruction of property or injury to persons, as well as those related to the sale and use of fireworks.³¹⁰ However, despite these allowances, a city cannot, for 20 years after annexation, prohibit the continued use of a permanent retail structure, over 5,000 square feet, for the indoor seasonal sale of retail goods if it was legally authorized for such use on the annexation's effective date.³¹¹ Additionally, Chapter 251 of the Texas Agriculture Code prohibits a city from imposing certain regulations against an existing agricultural operation. Each city should consult with local legal counsel regarding the ability to impose city regulations on existing uses in a newly annexed area.

5.6 Special Districts and 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. Additionally, rural water supply corporations may have certificated service areas that are protected from encroachment by federal law. Any city that seeks to annex these types of areas should consult with local legal counsel regarding the specific processes associated with that type of annexation.

³⁰⁶ *Id.* § 43.002(a), (c)

³⁰⁷ *Id.* § 43.002(a)(2)

³⁰⁸ *Id.* § 43.002(b)

³⁰⁹ *Id.* § 43.002(c)

³¹⁰ *Id.*

³¹¹ *Id.* § 43.002(e)

5.7 Annexing Area in Emergency Services Districts

As cities annex property, questions may 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 is not enough room under the two-cent cap for both? The usual first-in-time rule regarding provision of local sales taxes favors the existing ESD, since cities are generally unable to levy sales taxes in the ETJ. Cities and ESDs are authorized to enter into an agreement to allocate the revenue from the local sales tax between the city and the ESD.³¹² Note that there is no requirement on either party to enter the agreement. Additionally, if a city annexes territory in an ESD and intends to be the sole provider of emergency services in the area, it must provide notice to the ESD to complete the removal and perform a number of other steps, both procedural and financial.³¹³

³¹² Tex. Health & Safety Code § 775.0754.

³¹³ *Id.* § 775.022(a)