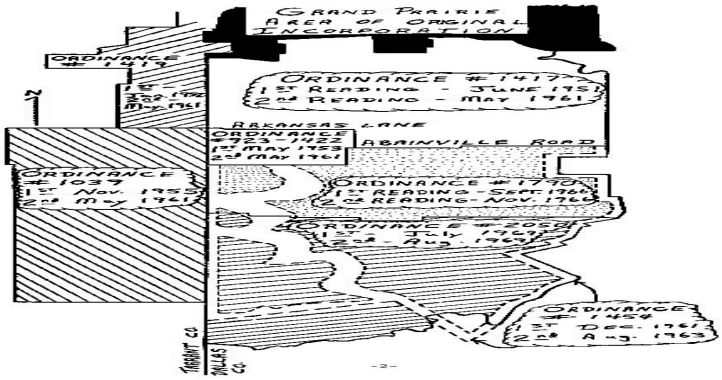
MUNICIPAL ANNEXATION IN TEXAS

"THE BASICS"



Comprehensive Guide Available at www.tml.org

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Table of Contents: The Three Questions of Annexation

1. Why does the city want to annex?…….. 2

2. Does the city have authority to annex?..... 3

3. What annexation procedures must a city follow? 4

The Three Questions of Annexation

Is annexation really that complicated? It depends. A better word for it might be tedious. The Municipal Annexation Act of 1963 (now found in Chapter 43 of the Texas Local Government Code) has been amended so many times over the years to address specific situations that it is sometimes hard to understand. That being said, there are essentially three questions to ask when annexing any piece of property.

1. **Why does the city want to annex?** The TML Legal Department largely advises on the annexation process from a legal rather than a policy standpoint, but it is critical for a city to understand the reasons behind an annexation to explain it to the current city residents and those targeted for annexation. Most cities annex for two basic reasons: (1) to control development; and/or (2) to expand the city's tax base. Each city should carefully consider the pros and cons of annexation, and also have an understanding of whether it is necessary, prior to annexing. There are numerous city officials and planning and law firms in Texas with expertise in this area, and cities should take advantage of their expertise.

   The following is a brief review of the most basic elements of municipal finance and intergovernmental relations:

   Cities (city taxpayers) pay for a wide array of services and facilities that benefit entire regions and the entire state. For example, it goes without saying that such basic activities as mail delivery couldn't take place if cities don't construct and maintain streets. The economy of Texas would crumble without city investments in the basic infrastructure upon which business and industry rely. Cities are centers of employment, health care, entertainment, transportation, and merchandising used by non-city-residents throughout the region. This means that cities must support public safety services and a physical infrastructure sufficient to serve a daily influx of visitors from throughout the metropolitan region.

   Most states recognize that cities should be assisted in making these expenditures that benefit entire regions and the whole state. Virtually every state transfers state-generated revenue to cities to assist in the provision of services and facilities. They do this in recognition of the fact that cities (city taxpayers) are making expenditures that benefit all residents of the state. For example, all populous states give a portion of state gasoline tax revenue to cities to assist in street construction and repair. Many states share vehicle registration revenue or motor vehicle sales tax revenue with cities. A survey conducted by the National League of Cities found that cities across the nation receive 13 percent of their revenue from state aid.

   In Texas, there is virtually no state aid to cities. Take a look at a municipal budget and try to find a revenue line item called "Transfer from State" or "State Financial Assistance." While such line items are common in other states, they're generally not present in Texas.

But Texas has allowed cities to annex. Cities have used that authority to bring adjacent areas into the city and into the system through which cities finance the services and facilities that benefit the region and state.

To erode or eliminate municipal annexation authority without considering the issues of municipal revenue and intergovernmental relations would cripple cities and city taxpayers. If annexation authority were to be eliminated, Texas would become the only state in the nation that denies both state financial assistance and annexation authority to its cities. Opponents of annexation cannot point to a single state that has restricted annexation authority without implementing fiscal assistance programs under which the state helps cities pay for the infrastructure on which the entire state depends.

2. **Does the city have authority to annex?** Once a city has decided that it wants to annex property, the first step is to determine whether it has the *authority* to annex. To determine a city's authority, one must understand the fundamental difference between a general law city and a home rule city. Volumes have been written on the differences between the two. For purposes of brevity, and as a basic rule of thumb, the following statement will suffice:

> *A home rule city (usually over 5,000 population) may do anything authorized by its charter that is not specifically prohibited or preempted by the Texas Constitution or state or federal law; A general law city (usually under 5,000 population) has no charter and may exercise only those powers that are specifically granted or implied by statute.*

The previous statement is *very* generalized, but it serves to illustrate the fundamental difference between the two types of cities for all purposes, including annexation. Annexation authority is discussed in detail later, but as a general rule the authority to annex is found in Subchapter B of Chapter 43 of the Local Government Code. For example, Section 43.021 authorizes a home rule city to annex according to its charter, and most home rule charters authorize annexations without consent. On the other hand, general law cities, for most annexations, must receive a request from landowners or voters prior to annexing. Some exceptions allow general law cities to annex without consent, but those are very limited. The bottom line for general law cities is that the legislature has seen fit to severely limit when they can annex.

Requirement to offer development agreement. Section 43.035 of the Texas Local Government Code should be the first place a city looks when it decides to annex because the section prohibits a city from annexing an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers a development agreement to the landowner that would:

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

A landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. An annexation that is completed without offering an agreement is void. The intent of the law is to allow a landowner who truly intends to continue using his land for agriculture, wildlife management, or timber management to remain outside of a city's limits. It is not meant to allow development that subverts municipal regulations.

Requirement that area be in the city's ETJ. An area to be annexed must be within the city's extraterritorial jurisdiction (ETJ), and the area to be annexed cannot be located within the ETJ of another city.

Authority to annex unilaterally (without consent). Most home rule charters in Texas, read in conjunction with Chapter 43 of the Local Government Code, provide for unilateral (non-consensual) annexation by home rule cities.

Chapter 43 also provides the statutory authority for general law cities to annex, and Section 43.033 of the Texas Local Government Code is the only major exception to the rule that general law cities may annex only by petition (consensual). That section allows for unilateral annexation by a city with a population between 1,000 and 5,000 if the city: (1) is providing the area with water or sewer service; and (2) the area: (A) does not include unoccupied territory in excess of one acre for each service address for water and sewer service; or (B) is entirely surrounded by the city and the city is a type A general-law city. Other specific provisions may allow a general law city to annex without consent, but they are very limited.

Authority to annex by petition (with consent). All cities are authorized to annex a sparsely occupied area on petition of the area's landowners, if the area meets certain requirements. In addition, general law cities may annex inhabited areas if the majority of the qualified voters of the area are in favor of becoming part of the city.

3. **What annexation procedures must a city follow?** The provisions that give a city the power or *authority* to annex are generally codified in Subchapter B of the Texas Local Government Code and in the charter of a home rule city. However, the *procedures* that a city must follow for an annexation are codified in Subchapters C (plan annexations – three-year process) or C-1 (exempt annexations – much shorter process) of the Local Government Code. What subchapter to follow is based on whether or not the area must be included in an annexation plan. The procedures prescribed by Subchapters C or C-1 must be followed for every annexation of any type. They generally require the preparation of a service plan that spells out the level of municipal services an area will receive upon being annexed. The services must be similar to what current residents receive. In addition, they provide for notice of the annexation and notice of hearings that must be held on the service plan.

Annexation Plan. Every city in Texas was required to adopt an annexation plan on or before December 1, 1999. The term "annexation plan" is a term of art, and is adopted for

the purposes of deciding which procedures apply to the annexation of a particular area. Certain types of area are exempt from the plan requirement. For example, if an area contains fewer than 100 residential dwellings, the area is not required to be placed in an annexation plan. Also, if the land is annexed by petition of area landowners or voters, the area is not required to be in a plan.

This paper is meant to be a brief primer on annexation in Texas. For a free, full paper on municipal annexation that includes detailed information and sample forms, please visit www.tml.org, click on Legal, Land Use and Building Regulations, "Annexation in Texas – Paper."