ANNEXATION PROCESS AND PROCEDURES AFTER HB 347

Charles E. Zech

Shareholder
Denton, Navarro, Rocha, Bernal & Zech P.C.
cezech@rampagelaw.com

This paper is a condensed version of Mr. Scott Houston's paper *Municipal Annexation in Texas* and borrows liberally if not outright from that document, both in structure and in substance, and is done so with the full permission of Mr. Scott Houston, Deputy Executive Director and General Counsel for the Texas Municipal League. Any mistakes in this paper are mine and not his. For a more detailed analysis of Annexations in Texas, including policy considerations, please refer to that paper. I owe a tremendous amount of thanks to Mr. Houston for his allowance of my use. So…. Thank you, Scott. You are indeed a scholar and a gentleman. Finally, this paper is **NOT** a substitute for the law. Always refer to Chapter 43 during your annexation processes.

I. HISTORY

In 1963, the legislature enacted the Municipal Annexation Act. The Act provided procedures for annexation and created the concept of extraterritorial jurisdiction (ETJ). Codified in Chapters 42 and 43 of the Texas Local Government Code (the "Code") the Act, as the name suggests, regulates municipal annexation. The next major piece of legislation regarding annexation occurred during the 1999 legislative session and substantially amended the annexation laws. S.B. 89 was a complete rewrite of Texas annexation laws and set out specific process required to be followed prior to annexation areas of land based on population density.

While assaults on annexation authority continued in the public discourse and with bills filed during various legislative sessions annexation authority remained unchanged until the 2007 legislative session when H.B. 1472 was enacted requiring the mandatory offer of a development agreement in lieu of annexation for land with agricultural, wildlife and timberland tax exemptions.

In 2015, Senate Bill 6 and House Bill 6 were filed during a special session. Senate Bill 6 passed and became effective on December 1, 2017. Senate Bill 6 required landowner or voter approval of annexations in "Tier 2" cities, those cities located in the state's largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process. All remaining cities, "Tier 1" cities, continued to operate under the previous rules with minor modifications but no requirement of voter approval.

In 2019, several bills were adopted which impacted annexation:

House Bill 347 ended most unilateral annexations by any city, regardless of population or location. Specifically, the bill: (1) eliminated the distinction between Tier 1 and Tier 2 cities and counties created by S.B. 6; (2) eliminated existing annexation authority that applied to Tier 1 cities and requires most annexations subject to the three consent annexation procedures that allow for annexation: (a) on request of the each owner of the land; (b) of an area with a population of less than 200 by petition of voters and, if required, owners in the area; and (c) of an area with a population of at least 200 by election of voters and, if required, petition of landowners; and (3) authorizes certain narrowly-defined types of annexation (city-owned airports, navigable streams, strategic partnership areas, industrial district areas, etc.) to continue using a service plan, notice, and hearing annexation procedure similar to the previous law.

House Bill 4257, related to election-approved annexations, applies to Chapter 43, Subchapter C-4 and provides that: (1) the disapproval of the proposed annexation of an area does not affect any existing legal obligation of the city proposing the annexation to continue to provide governmental services in the area, including water or wastewater services, regardless of whether the municipality holds a certificate of convenience and necessity to serve the area; and (2) a city that makes a wholesale sale of water to a

special district may not charge rates for the water that are higher than rates charged in other similarly situated areas solely because the district is wholly or partly located in an area that disapproved of a proposed annexation.

Senate Bill 1024 applies only to "consent exempt" annexations and provides that: (1) a city with a population of 350,000 or less shall provide access to services provided to an annexed area under a service plan that is identical or substantially similar to access to those services in the city; (2) a person residing in an annexed area subject to a service plan may apply for a writ of mandamus against a city that fails to provide access to services in accordance with (1); (3) in the action for the writ: (a) the court may order the parties to participate in mediation; (b) the city has the burden of proving that it complied with (1); (c) the person may provide evidence that the costs for the person to access the services are disproportionate to the costs incurred by a municipal resident to access those services; and (d) if the person prevails, the city shall disannex the property that is the subject of the suit within a reasonable period specified by the court or comply with (1); and (e) the court shall award the person's attorney's fees and costs incurred in bringing the action for the writ; and (4) a city's governmental immunity to suit and from liability is waived and abolished to the extent of liability created under the bill.

Finally, Senate Bill 1303 provides that: (1) every city must maintain a copy of the map of city's boundaries and extraterritorial jurisdiction in a location that is easily accessible to the public, including: (a) the city secretary's office and the city engineer's office, if the city has an engineer; and (b) if the city maintains a website, on the city's website; (2) a city shall make a copy of the map under (1), above, available without charge; (3) not later than January 1, 2020, a home rule city shall: (a) create, or contract for the creation of, and make publicly available a digital map that must be made available without charge and in a format widely used by common geographic information system software; (b) if it maintains a website, make the digital map available on that website; and (c) if it does not have common geographic information system software, make the digital map available in any other widely used electronic format; and (4) if a city plans to annex under the "consent exempt" provisions, a home rule city must: (a) provide notice to any area that would be newly included in the city's ETJ by the expansion of the city's ETJ resulting from the proposed annexation; and (b) include in the notice for each hearing a statement that the completed annexation of the area will expand the ETJ, a description of the area that would be newly included in the ETJ, a statement of the purpose of ETJ designation as provided by state law, and a brief description of each municipal ordinance that would be applicable, as authorized by state law relating to subdivision ordinances, in the area that would be newly included in the ETJ; and (c) before the city may institute annexation proceedings, create, or contract for the creation of, and make publicly available, without charge and in a widely used electronic format, a digital map that identifies the area proposed for annexation and any area that would be newly included in the ETJ as a result of the proposed annexation.

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