

MUNICIPAL AUTHORITY IN THE ETJ:

YOU'RE NOT THE BOSS OF ME

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Introduction

- Cities vs. Developers/Landowners/Builders
- Cities vs. Counties

History of the ETJ

- **Municipal Annexation Act** (CH. 43, TEX. LOC. GOV'T CODE)
 - Introduced version
 - “Sec. 2(a) The governing body of any city or town may, by ordinance, extend to all of the extraterritorial jurisdiction . . . The application of one or more of such city or town's ordinances relating to: health; sanitation; subdivision development; zoning; **building construction including but not limited to building, plumbing and electrical standards and regulations**. Tex. H. B. 13, 58th Leg., R.S. (1963) (Introduced Version), at p. 6.
 - Enrolled version
 - “Section 4. Extension of Subdivision Ordinance within the Extraterritorial Jurisdiction. The governing body of any city may extend by ordinance to all of the area under its extraterritorial jurisdiction the application of such city's ordinance establishing rules and regulations governing **plats and the subdivision of land**. . . . Tex. H.B. 13, 58th Leg., R.S. (1963)(Enrolled Version), at p.108-109.

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History of the ETJ – § 212.003 LOC. GOVT. CODE

- Proposed amendment
 - Section 212.003 EXTENSION OF RULES TO EXTRATERRITORIAL JURISDICTION, (a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 and other municipal ordinances relating to fire safety, the **construction of buildings or other structures or improvements**, or access to public roads. Tex. H.B. 3187, 71st Leg., R.S. (1989)(Introduced Version), at p. 13.
- Background/Bill analysis
 - “Cities have **limited authority to regulate traffic and construction of buildings in ETJ areas**.” HOUSE COMM. ON URBAN AFFAIRS, BILL ANALYSIS, Tex. H.B. 3187, 71st Leg., R.S. (1989), *Id.* at 15.

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History of the ETJ – § 212.003 LOC. GOVT. CODE

- Substitute Bill
 - Section 212.003 EXTENSION OF RULES TO EXTRATERRITORIAL JURISDICTION, (a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 and other municipal ordinances **relating to access to public roads**. Tex. H.B. 3187, 71st Leg., R.S. (1989) (House Comm. Substitute), at 48.
- Bill analysis
 - “In Section 6, the original bill allowed extension into the ETJ of municipal ordinances relating to fire safety, construction of buildings or other improvements or access to public roads. **The substitute allows the extension into the ETJ of ordinances relating to access to public roads only.**” HOUSE COMM. ON URBAN AFFAIRS, BILL ANALYSIS, TEX. H.B. 3187, 71st Leg., R.S. (1989), at 17.

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Statutory Construction Is Consistent

- Courts have held that a city must have **express (or implied when such power is reasonably incident to those expressly granted)** statutory authority to exercise its extraterritorial power. *City of Sweetwater v. Hamner*, 259 S.W. 191 (Tex. Civ. App. 1924, error dismissed).
- “(A) city’s authority to regulate land development in its ETJ is wholly derived from a legislative grant of authority.” *FM Props Operating Co. v. City of Austin*, 22 S.W. 3d 868, 902 (Tex. 2000). Justices Abbott, Hecht and Owen in dissent.

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