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The Regulation of Development in the ETJ Including the Creation of Special Districts

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The Regulation of Development in the ETJ

Including the Creation of Special Districts

Introduction. This paper will address regulating development in the ETJ and creating special districts. Included is a discussion of the pros and cons of using an In-City MUD v. PID/TIRZ.

Regulatory Authority over Development

It's important to understand the extent of an Extraterritorial Jurisdiction (ETJ), what type of municipality regulates within the ETJ, and the size of the ETJ.

Under Texas law, three types of municipalities are authorized:

- **Home rule cities.** Under Section 5.004 of the Texas Local Government Code, a home rule city derives its power from the Texas Constitution, and has the power to self-govern, save for any limitations placed on the city's power by the Texas Legislature.
- **General-law cities.** Under Section 5.001-5.003 of the Texas Local Government Code, general-law municipalities have only such implied powers as are reasonably necessary to make effective the powers expressly granted to them by the Texas Legislature. General-law cities are Type A, Type B, and Type C.
- **Special-law cities.** Under Section 5.005 of the Texas Local Government Code, special-law municipalities operate under a municipal charter that is granted by local law enacted by the Texas Legislature.

Home rule cities derive their authority from the Texas Constitution, not from the acts of the Legislature. See Tex. Const. Art. XI, §5. As the Texas Supreme Court has consistently acknowledged, "[h]ome-rule cities have the full power of self-government and look to the Legislature, not for grants of power, but only for limitations on their powers." *Southern Crushed Concrete, LLC v. City of Houston*, 398 S.W.3d 676, 678 (Tex. 2013).

A General-law city is limited to governmental structures and powers specifically granted by state law.

Cities have broad zoning and other land use regulatory authority in the corporate limits. Those powers are greatly restricted outside of the corporate limits. Extraterritorial powers must be authorized by statutes. Tex. Att'y Gen. Op. LO-97-055 (1997).

ETJ Defined

The extraterritorial jurisdiction (ETJ) is an "unincorporated area that is contiguous to the corporate boundaries" of a city. Tex. Loc. Gov't Code § 42.021. The ETJ, a concept created by the Texas Legislature in 1963, is said to be established in order "to promote and protect the general health, safety, and welfare of persons residing in and adjacent to" cities, a sort of buffer zone outside of a city's corporate limits. Id. § 42.001. Despite this, cities have been granted relatively little authority to address health and safety issues in the ETJ. Thus, some argue that the real purpose of the ETJ is to limit the geographic area in which a city may annex.

Territory of City's ETJ

All Texas cities, by statute, have an extraterritorial jurisdiction. ETJ is “the unincorporated area that is contiguous to the corporate boundaries of the municipality” and is located within a specified distance of those boundaries depending upon the municipality’s population. Tex. Loc. Gov’t Code § 42.021. The size of a city’s ETJ depends on the city’s population:

- Less than 5,000 inhabitants – ETJ extends .5 miles past city limits
- 5,000-24,999 inhabitants – ETJ extends 1-mile past city limits
- 25,000-49,999 inhabitants – ETJ extends 2 miles past city limits
- 50,000-99,999 inhabitants – ETJ extends 3.5 miles past city limits
- 100,000 or more inhabitants – ETJ extends 5 miles past city limits

Difference in amount of territory than provided in state law

The extent of a city’s ETJ could be different than what state law provides as the result of local factors and circumstances. For instance, a city that incorporates immediately adjacent to another city may have no ETJ at all. A more common reason for a city’s ETJ to be different than the distance limits in Section 42.021 is that the city used its authority to adopt an ordinance to bring land contiguous to its ETJ into its ETJ at the request of the landowners. Tex. Loc. Gov’t Code § 42.022(b).

ETJ Expansion

An ETJ can expand by Landowner request, discussed above. The city may adopt an ordinance to bring land contiguous to its ETJ into its ETJ at the request of the landowners. Tex. Loc. Gov’t Code § 42.022(b).

When a city annexes an area, the ETJ “expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries.” Id. § 42.022(a); but see, e.g., id. § 42.0225. For example, when a city of 100,000 or more inhabitants annexes an area, its new ETJ would generally comprise the unincorporated area contiguous to the new city boundaries within five miles of the new boundaries. See id. § 42.021(5).

The ETJ of a city may not expand by an increase in the number of inhabitants, on request of a landowner, or through annexation into another city’s ETJ without that city’s consent. Id. §§ 42.022(c), 42.023.

The ETJ of a city generally may not be reduced, unless the city council of the city gives its written consent. Id. §§ 42.022(d), 42.023.

ETJ SWAP

Certain cities have express authority to swap or apportion their ETJs. Tex. Loc. Gov’t Code §42.024.

Whether general law cities have authority to contractually agree to swap ETJ was discussed in *City of Justin v. Town of Northlake*, No. 06- 17-00054-CV, 2018 WL 4259853 (Tex. App.—Texarkana June 15, 2018, pet. denied) (mem. op.). The City of Fort Worth exchanged ETJ with a

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