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**BORDERLANDS, EXTRATERRITORIAL LANDS,
EXTRATERRITORIAL JURISDICTION AND FRINGES OF THE CITIES:
THE TWILIGHT ZONE**

Scott Bounds and Justin Pruitt

Scott Bounds and Justin Pruitt
OLSON & OLSON, LLP
Houston, TX

SBounds@OlsonLLP.com
JPruitt@OlsonLLP.com
713.533.3800

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Notes from Scott Bounds and Justin Pruitt, April 2022¹

PROLOGUE – BACK TO THE FUTURE.

S.B. 275, 40th Tex. Leg. Reg. Sess. (1927) - AN ACT Relative to White and Negro Communities, in Municipalities, to Foster a Separation of White and Negro Residence Communities in the Interest of Peace, Safety and Welfare; Fixing a Penalty and Declaring an Emergency....“Section 1: That the power and authority is hereby conferred upon the Cities of Texas to provide by suitable ordinance for the segregation of negroes and whites in any such city and withhold permits to build or construct a house to be occupied by white people in negro communities as defined by ordinance and to withhold building permits to any negro to establish a residence on any property located in a white community inhabited by white people as defined by ordinance.”

S.B. No. 277, 40th Tex. Leg. Reg. Sess. (1927) - AN ACT to Provide for the Approval by Municipal Authorities Before Filing, and for the Filing and Recordation of Plans, Plats or Replats of Land Lying in or Within Five Miles of the Corporate Limits of Cities Having a Population of ~~Fifty~~ twenty-five Thousand inhabitants or more, according to the Federal Census of 1920....²

H.B. No. 87, 40th Tex. Leg. Reg. Sess. (1927) – AN ACT authorizing cities and incorporated villages to pass zoning regulations....³

(2020)

TEXAS CITIES – POPULATION OVER 25,000:

1920 US Population Rank	City	1920	1930 ⁴	2020	(Tx rank)
41	San Antonio	161,379	231,542	1,434,625	2
42	Dallas	158,976	260,475	1,304,379	3
45	Houston	138,276	292,352	2,304,580	1
65	Fort Worth	106,482	163,447	918,915	5
89	El Paso	77,560	102,421	678,815	6
...					
	Galveston	44,255	52,938	53,695	69
	Beaumont	40,422	57,732	115,282	32
	Wichita Falls	40,079	43,690	102,316	40
	Waco	38,500	52,848	138,486	24
	<u>Austin</u>	<u>34,876</u>	53,120	961,855	4
	Port Arthur	22,251	50,902	56,039	68
	Amarillo	15,494	43,132	200,393	15
	Laredo	22,710	32,618	255,205	12
	San Angelo	10,050	<u>25,308</u>	99,893	42
	Corsicana	11,356	15,202	<u>25,109</u>	128

¹ UT CLE 26th Annual Land Use Conference, Austin, Texas. ETJ history and opportunities.

² Acts 1927, 40th Tex. Leg. ch. 231, p. 342 (1927), originally codified as article 974a, Vernon’s Texas Civil Statutes.

³ Acts 1927, 40th Tex. Leg. Reg. Sess. ch. 283 (1927), originally codified as article 1011a-j, Vernon’s Texas Civil Statutes.

⁴ Texas Almanac (cities over 25,000 population).

1912: HOME RULE MUNICIPALITIES⁵ - ANNEXATION AND EXTRATERRITORIAL POWERS.⁶

Prior to the adoption of the home rule amendment to the Texas Constitution in 1912, cities had no annexation authority and expanded their boundaries either by special law of the Legislature or by a petition process under the general laws of the State. *Id.* With the adoption of home rule, the Texas Legislature provided cities with over 5,000 population authority to act beyond their territorial limits, including the authority to unilaterally annex property and to define and regulate nuisances within 5,000 feet of their corporate limits.⁷ Session Laws – Acts 1913, 33rd Tex. Leg., ch. 147, original codified art. 1175, Vernon’s Texas Civil Statutes. When the home-rule amendment was adopted, thirty-seven Texas cities had a population greater than 5,000.

1927: FORMALIZATION OF CITIES’ ZONING AND SUBDIVISION AUTHORITY.

Before 1926, Texas had no statute concerning municipal authority related to subdivision or zoning regulation. *See generally* Richard Walker, *Zoning Law in Texas*, 3 SMU Law Review 50, 50-51 (1949). Following the United States Supreme Court’s decision upholding the municipal planning and zoning authority in *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the 1927 Texas Legislature enacted bills providing all cities general authority to regulate subdivisions of land and to implement zoning within their territorial bounds. The Legislature also gave cities with over 25,000 population the authority to plan and regulate development within five miles of their corporate limits⁸.

The subdivision and zoning authority did not arrive in a vacuum. The National Conference on City Planning (NCCP) founded in 1909, the City Planning Committee of the National Association of Real Estate Boards (NAREB) formed in 1914, and the American City Planning Institute (ACPI) chartered in 1917, worked with each other regarding a national study of “The Best Methods of Land Subdivision.” M. Weiss, *Planning Subdivisions: Community Builders and Urban Planners in the Early Twentieth Century*, *Essays in Public Works History*, pp. 27-28 (Sept. 1987). “Beginning in 1914 the attention of city planning began to shift dramatically away from the downtown and onto the peripheral growth of metropolitan areas. Debate over proposed public improvements moved from civic centers to major streets and highways. Moreover, an additional vital element was added to the universe of planning discourse – regulation, coordination, and planning of private land use through zoning laws and public review of subdivision plats.” *Id.* The concerted efforts of the NCCP, the NAREB, and the ACPI groups were driven, at least in part, by technological changes in transportation (cars), in utility construction, and in building construction; by

⁵ The county home rule movement did not enjoy the success of municipal home rule. In 1933, Texas adopted county home rule allowing a county with a population of sixty-two thousand or more to adopt a charter. Tex. Const. art. IX, sec. 3 (repealed Aug. 5, 1969). However, the process was so compromised that it proved inoperative, including the requirements of majority approval by the resident qualified electors (rather than a majority of those voting), a majority of those voting within incorporated areas of the county, and a majority of those voting outside the incorporated area. In El Paso County, rural voters vetoed a proposed home-rule charter despite an overall majority in the county favoring it. *See generally* Benton, “The County Home Rule Movement in Texas,” 31 *Southwestern Social Science Quarterly* 108 (1950). The county home-rule amendment was repealed in 1969.

⁶ Scott Houston, *Municipal Annexation in Texas* (July 2019).

⁷ *Cf. Stoughton v. City of Fort Worth*, 277 S.W.2d 150 (Tex. Civ. App.—Fort Worth 1955, no writ) (whether city had extra-territorial jurisdiction to control fireworks outside the city).

⁸ Although the Legislation provided for an election mechanism for smaller cities to regulate subdivisions within five miles of their boundaries, I found no evidence of it being used.

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