

DEVELOPMENT ISSUES OUTSIDE CORPORATE LIMITS

**(a City Attorney's
Perspective)**

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I.

INTRODUCTION

In 1963, the Texas Legislature, as part of the Municipal Annexation Act, Tex. Rev. Civ. Stat. Ann. art. 970a, created the concept of extraterritorial jurisdiction (“**ETJ**”). Chapters 42 and 43 of the Texas Local Government Code comprise the current version of the Municipal Annexation Act, which governs the ability of municipalities to annex property. The policy purpose underlying ETJ is described in Section 42.001 of the Texas Local Government Code:

The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.

ETJ by statute is defined as “the unincorporated area that is contiguous to the corporate boundaries of the municipality. . . .” Tex. Loc. Gov’t Code § 42.021. The geographical extent of any municipality’s ETJ is contingent upon the number of inhabitants of the municipality. *Id.*

While admittedly the concept of ETJ was created primarily to address annexation practices and to create geographic limits on a city’s ability to annex, the stated public purpose of ETJ (as set forth in Tex. Loc. Gov’t Code § 42.021) clearly goes beyond mere annexation control as it creates a special interest zone outside a city’s corporate boundaries that, to the extent allowed by law, permits a city to protect not only those inside the city, but those just outside the city as well.

Development of land outside of city limits, however, can involve jurisdictional conflicts between cities and counties, as well as conflicts between landowners and cities on the extent to which a city may regulate in the ETJ. Practical problems can also arise when a city seeks to apply in-city urban design standards to rural environments, particularly if those standards are applied to development project that are started prior to annexation.

This paper, offered from a city attorney’s perspective, seeks to discuss the general power of cities to regulate in the ETJ, which range from standard, noncontroversial powers, to the controversial, unanswered question of whether home-rule cities have the inherent power to require building permits, inspections, and approvals for development of property located within a home-rule city’s ETJ. This ETJ permitting issue is squarely before the Dallas Court of Appeals in a dispute between an ETJ landowner, the City of McKinney, and Collin County, in *Collin County, Texas, v. The City of McKinney, Texas, v. Custer Storage Center, LLC*; No. 05-17-00546-CV (oral argument held on March 8, 2018).

II.

MUNICIPAL REGULATION IN THE ETJ – THE EASY STUFF

Texas municipalities possess the authority to regulate in their ETJs pursuant to a number of express provisions of the Texas Local Government Code. These powers are, for the most part, noncontroversial and are routinely administered.

A. Subdivision Regulations

While Texas municipalities do not possess the statutory authority to zone property in their ETJs, Section 212.003 of the Texas Local Government Code provides that a subdivision ordinance is applicable to a municipality's ETJ *if, and only if*, the municipality specifically has extended its subdivision regulations to the ETJ. Thus, subdivision regulations are *not* automatically applicable to a municipality's ETJ. Section 212.003 specifically provides as follows:

(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. However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:

(1) the use of any building or property for business, industrial, residential, or other purposes;

(2) the bulk, height, or number of buildings constructed on a particular tract of land;

(3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage; or

(4) the number of residential units that can be built per acre of land.

(b) A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.

(c) The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction.

Most, if not all, municipalities routinely extend the application of their subdivision regulations to their ETJs. Thus, platting in the ETJ is fairly commonplace.

B. Subdivisions, House Bill 1445 and the ETJ

House Bill 1445, as it is commonly known, was adopted by the 2001 session of the Legislature and provided for an agreement between a county and a municipality to regulate a subdivision and related permits in the ETJ of a municipality. Now codified in Chapter 242 of the Texas Local Government Code, H.B. 1445 requires that a city and county (except for counties over 1.9 million and border counties) enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the ETJ. *See* Tex. Loc. Gov't Code § 242.001(a).

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