

ETJ, DEVELOPMENT AGREEMENTS, AND ANNEXATION

A Guided Topical Panel Discussion

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THE EXTRATERRITORIAL JURISDICTION (ETJ)

- A city's extraterritorial jurisdiction (ETJ) is the statutory area around the City limits which the City is permitted to annex.
- Very limited regulatory authority in the ETJ. Generally, signs and subdivisions (with Ch.242 agreement) can be regulated by the City in the ETJ.



ETJ EXPANSION

- ETJ used to expand to the statutory limits with annexation of land.
- In 2023, SB 2038 amended LGC Sec. 42.021, to state:

“An annexation commenced after January 1, 2023, **does not** expand the extraterritorial jurisdiction of a municipality **unless** contemporaneously with the annexation the owner or owners of the area that would be included in the municipality's extraterritorial jurisdiction as a result of the annexation request that the area be included in the municipality's extraterritorial jurisdiction.”

- Voluntary annexation into the ETJ is the only current path to expanding the ETJ.

ETJ RELEASE & SB 2038

- A resident of an area in the ETJ may file a petition with the City to be released from the ETJ.
- May petition for the release of an area of the ETJ:
 - More than 50% of the registered voters of the area, or
 - The owner or owners of the majority in value of an area.180 days to get signatures & must include a map and boundary description.
- A resident of the ETJ may request the City hold an election to determine whether to release an area from the ETJ
 - Petition requires at least 5% of the registered voters residing in the area as of the date of the preceding uniform election date.
 - Must include a map and boundary description (metes & bounds or lot & block numbers)
 - Cannot submit the same (or substantially the same) request for 2 years

ETJ RELEASE & SB 2038 - CONTINUED

- The bill includes some exceptions:

Within 5 miles of the boundary of a military base...

An area that was voluntarily annexed into the ETJ that is located in certain counties (based on population over 240,000 and more than 50% growth from 2010-2020)

Within the portion of the ETJ of a City with a population of more than 1.4 million that is within 15 miles of a military base in a county with a population over 2 million (Bexar, Tarrant, Dallas, Harris)

In an area designated as an industrial district under LGC Sec.42.044

In an area subject to a strategic partnership agreement entered into under LGC Sec.43.0751

- For a petition, the city can simply take no action on a petition, allowing the ETJ release by operation of law rather than formally releasing ETJ.
- For an election petition the city can voluntarily release instead of holding election.

REASONS FOR CITY TO ANNEX

- Primary reason is growth and health of City
- Increase development opportunities
- Increase Tax Base
- Control/Regulate development and land use



VOLUNTARY ANNEXATION

- Due to the changes in annexation laws, voluntary annexation is the most common type of annexation.
- LGC Ch.43, Subchapter C-3 Annexation of area on request of owners (voluntary annexation)
 - Home-rule or general law cities
 - Requires voluntary request/petition from owner
 - Property must be contiguous with city limits or property under a development agreement
 - Requires written services agreement
 - Notice requirements and procedure listed in LGC Ch.43, Subchapter C-3



REASONS FOR PROPERTY OWNERS TO ANNEX

- Receive city services such as police, fire, EMS, solid waste collection, city utilities (if CCN is tied to city limits)
- Development agreement incentives
- Protect land value and regulate land use

WHAT ARE DEVELOPMENT AGREEMENTS IN THE CONTEXT OF ANNEXATION?

At the time a municipality makes an offer to a landowner to enter into an agreement in which the landowner consents to annexation, the municipality must provide the landowner with the written disclosure described by Section 212.172(b-1)

A municipality may not annex an area to which this section applies unless the municipality offers to make a development agreement with the landowner under Section 212.172 that would guarantee the continuation of the extraterritorial status of the area and authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the use of the area for agriculture, wildlife management, or timber



DEVELOPMENT AGREEMENT DISCLOSURE

- At the time a municipality makes an offer to a landowner to enter into an agreement under this subchapter, the municipality must provide the landowner with a written disclosure that includes
 - a statement that the landowner is not required to enter into the agreement
 - a plain-language description of the annexation procedures applicable to the land
 - whether the procedures require the landowner's consent
 - a statement regarding the municipality's waiver of immunity to suit

HOW DO DEVELOPMENT AGREEMENTS IMPACT ZONING?



extend the municipality's planning authority over the land by providing for a development plan to be prepared by the landowner and approved by the municipality under which certain general uses and development of the land are authorized



authorize enforcement by the municipality of certain municipal land use and development regulations in the same manner the regulations are enforced within the municipality's boundaries



authorize enforcement by the municipality of land use and development regulations other than those that apply within the municipality's boundaries, as may be agreed to by the landowner and the municipality

ADDITIONAL DEVELOPMENT AGREEMENT ELEMENTS

Can provide for infrastructure for the land streets and roads; street and road drainage; land drainage; water, wastewater, and other utility systems

Can authorize enforcement of environmental regulations

Can specify the uses and development of the land before and after annexation, if annexation is agreed to by the parties

Can provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties

COMPLIANCE WITH COMPREHENSIVE PLAN

1

Verify that the property that would be subject to the Development Agreement is within an area identified for future growth in your Comprehensive Plan

2

Verify that, if ultimately annexed, your utilities have the capacity to support any development anticipated

3

Structure the Development Agreement to make certain that, if annexed and implemented, the final development of the parcel will be compatible and result in supportable planned growth for the area

ISSUES ENCOUNTERED

Development Agreements written under older development standards that are no longer applicable

Development Agreements with vague, inconsistent, or non-specific language

Development Agreements that make commitments not supported by current elected officials or administration

Development Agreements that make unsupportable commitments because actual calculations and studies were not completed prior to execution

Development Agreements that misstate the authority, or have been rendered invalid due to changes in law or violation of terms

BENEFITS TO ENTITY

Excellent tool for managing future growth if done properly and cooperatively with landowners

Provides contiguity for annexing properties adjacent to properties under an authorized agreement

Can be strategically utilized to expand ETJ beyond the statutory minimums for purposes of voluntary annexation into the ETJ or City

Annexation remains discretionary on the part of the City

Creates a more predictable buffer to rapid growth and expansion

QUESTIONS?

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