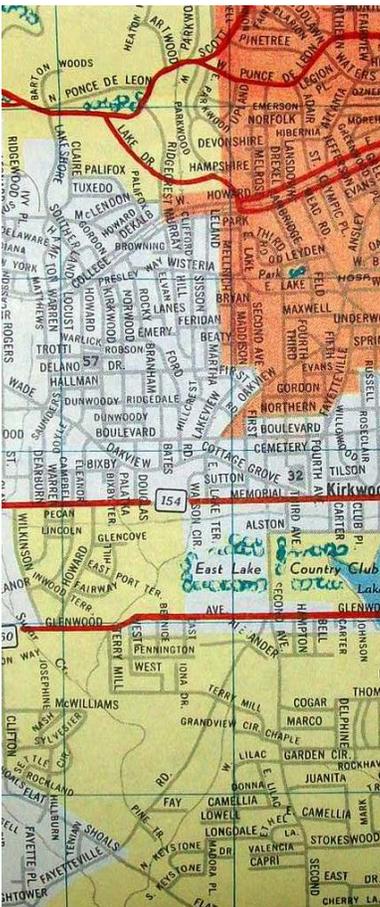




Chapter 5 Annexation and the ETJ

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This chapter discusses the role of annexation in Texas. It explains the differences in annexing home rule cities and general law cities and specific definitions and purposes of extraterritorial jurisdictions. The chapter explains the statutory framework for which Texans abide by annexation, giving general process requirements, or annexation/development development agreements and the annexation of water districts. Other statutory requirements include spatial requirements; hearings and notice requirements; service plan requirements--including service issues related to the level of service, capital improvements and water and wastewater service, and the impact on services to the balance of the city-- annexation processes, including concensual annexation processes, MAP processes, and MAP-exempt processes. The post-annexation requirements for all full purpose annexations, the continuation of uses and zoning, the limited purpose annexation and disannexation are also discussed. Annexation planning and explained in a step by step format, including managing the ETJ, developing an annexation plan, the annexation evaluation process, fiscal impact analysis, and implementation.



INTRODUCTION

Annexation is the process by which a city extends its municipal services, regulations, voting privileges and taxing authority to new territory.

Cities annex territory to provide urbanizing areas with municipal services and to exercise regulatory authority necessary to protect public health and safety. Annexation and the imposition of land use controls can also be a tool with which to implement a comprehensive plan. Annexation is also a means of ensuring that residents and businesses outside a city's corporate limits who benefit from access to the city's facilities and services share the tax burden associated with constructing and maintaining those facilities and services. Recognizing that annexation is essential to the efficient extension of urban services and to the general well being of cities and their residents, Texas annexation law (codified in Chapter 43 of the Texas Local Government Code) allows home rule cities to annex territory on a non-consensual basis.

General Law and Home Rule

Chapter 43 differentiates between and general law and home rule cities in terms of their relative authority to annex. A general law city is a municipality with a population of less than 5000 persons or a city with a population greater than 5000 which has not adopted a home rule charter. A general law city can only annex property on a non-consensual basis under certain conditions:

- The municipality has a population between 1000 and 5000 persons;
- The municipality is providing the area to be annexed with water or wastewater service; and
- The area to be annexed does not include unoccupied territory in excess of one acre for each service address for water and wastewater service or, in case of Type A general-law cities, the area is entirely surrounded by the city.

A home rule city is a municipality with a population greater than 5000 which has adopted a home rule charter. A home rule city may annex territory on a consensual basis or on a non-consensual basis. Some home rule charters,

General Law City

- population <5000
- population >5000 that has not adopted a home rule charter
- annex on non-consensual years under certain conditions

Home Rule City

- population >5000 with adopted home rule charter
- annex on a consensual or non-consensual years
- annexation may require voter approval



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Right: **Voter approval** may be required prior to annexation with consent.

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Non-consensual annexation

The authority to annex unilaterally, without consent

Consensual annexation

The authority to annex by petition, with consent

however, may require voter approval prior to annexation.

Chapter 43 differentiates between non-consensual annexations that are part of a Subchapter C municipal annexation plan (MAP) and those that are exempt from the requirement to be included in a MAP. Chapter 43 sets out different process for consensual annexations, MAP annexations and MAP-exempt annexations.

Chapter 43 also contains a number of special provisions that go beyond differentiating between home rule and general law cities and between MAP and exempt areas. These provisions include brackets, typically based on population, that grant certain cities special authority, exempt other cities from one or more requirements, or impose conditions for annexation not required of other cities. For these reasons, officials of cities considering annexation should carefully review the appropriate sections of the Local Government Code and closely monitor proposed amendments.

Because cities can only annex land within their extraterritorial jurisdiction (ETJ), any discussion of annexation must begin with consideration of the ETJ.



EXTRATERRITORIAL JURISDICTION (ETJ)

The ETJ of a city is the contiguous unincorporated land extending from its corporate limits that is not within another city's ETJ. The extent of a city's ETJ varies according to its population, ranging from one-half mile for communities with less than 5,000 persons, to five miles for cities greater than 100,000 in population. A city's ETJ may exceed its statutory size limit if the owners of additional contiguous area not in another city's ETJ request to be included in the ETJ. Annexations extend a city's ETJ out to the statutory limit or to the point where the extension abuts another municipality's ETJ. Annexation of city owned land, however, does not extend the ETJ. Cities may exchange or transfer ETJ within the spatial limitations described above. ETJ-related statutes can be found in Chapter .42 of the Local Government Code.

The purpose of the ETJ is to encourage cities to plan for growth in the area outside their corporate boundaries. The ETJ does this in two ways. First, there is a statutory prohibition against a municipality annexing into another city's ETJ. This provides a city with land that it alone can annex encouraging mid and long-range infrastructure and facilities planning in the ETJ. Second, cities are authorized to enforce their subdivision regulations and infrastructure standards (and a very limited number of other regulations) in their ETJ. This ensures that cities will not have to assume maintenance responsibilities for substandard infrastructure upon annexation and generally results in a higher standard of development than would have otherwise occurred.

The purpose of the ETJ is to encourage cities to plan for growth in the area outside their corporate boundaries.

Because of the direct relationship between the ETJ and a city's ability to annex land, proposals regarding the creation of special districts in the ETJ, requests for incorporation, and ETJ adjustments with other cities should be evaluated in terms of their potential impacts on future annexation.

STATUTORY FRAMEWORK FOR ANNEXATION

Most of the Texas statutes associated with annexation are codified in Chapter 43 of the Texas Local Government Code. Chapter 43 establishes a number of general procedural requirements for all annexations. These procedural requirements can be divided into:

1. General process requirements



MAP-Exempt Annexations Areas

In addition to the exemptions noted above, the following other areas are exempt from the requirement to be included in the MAP:

- Areas where more than 50% of the real property owners have petitioned for annexation, or by a vote or petition of the qualified voters or real property owners;
- Areas that are the subject of an industrial district contract or a strategic partnership agreement;
- Colonias;
- Areas included in boundary adjustments less than a 1000 feet wide that are part of agreements between cities;
- Areas enclosed within a military installation;
- An annexation to protect the area or municipality from imminent destruction of property or injury to persons; or a condition or use that constitutes a public or private nuisance; and
- The annexation of adjacent navigable streams by general law cities

2. Spatial requirements
3. Hearing and notice requirements
4. Service plan requirements

Prior to initiating an annexation program, staff should closely review Chapter 43 and consult with their city attorney to ensure that the correct procedures are being followed.

General Process Requirements

Municipal Annexation Plan

Section 43.052 of the Local Government Code requires all cities to adopt a municipal annexation plan (MAP). To annex an area that contains more than 99 tracts on which one or more residential dwellings are located on each tract on a non consensual basis the area must be included in the municipal annexation plan (MAP) and can only be annexed following the three-year MAP process set out in Chapter 43 Subchapter C. The MAP process is discussed in detail elsewhere in this chapter.

All consensual annexation areas and areas that contain fewer than 100 tracts on which one or more residential dwellings are located on each tract are exempt from the requirement to be included in the MAP and can be brought into the City within a much shorter time frame. The statute places limitations on dividing an area into separate areas of less than 100 tracts.

In addition to the exemptions noted above, the following other areas are exempt from the requirement to be included in the MAP:

- Areas where more than 50% of the real property owners have petitioned for annexation, or by a vote or petition of the qualified voters or real property owners;
- Areas that are the subject of an industrial district contract or a strategic partnership agreement;
- Colonias;



- Areas included in boundary adjustments less than a 1000 feet wide that are part of agreements between cities;
- Areas enclosed within a military installation;
- An annexation to protect the area or municipality from imminent destruction of property or injury to persons; or a condition or use that constitutes a public or private nuisance; and
- The annexation of adjacent navigable streams by general law cities

Annexation/development Development Agreements

Section 43.035 of the Texas Local Government Code requires that all cities offer the owners of property covered by agricultural, wildlife or timber management exemptions an annexation/development agreement before the property can be annexed on a non-consensual basis. Implications of this requirement are discussed in greater detail in the annexation planning section of this chapter.

Annexation of Water Districts (MUDs and WCIDs)

Chapter 43 includes a number of requirements regarding the annexation of water districts. Unless a district is located in two or more ETJs, the city must annex the entire district. Following its annexation, the district must be dissolved and the city must assume all of the district's debts and assets. If a district is located in two or more ETJs, it can be annexed piecemeal in accordance with an allocation agreement regarding the district's assets and debts with the other city or cities.

If the annexation precludes the developer from being reimbursed through district bonds the city must reimburse the developer all the costs that are eligible for reimbursement from bond proceeds under the rules of the Texas Environmental Conservation Quality Commission.

Spatial Requirements

- Annexation areas must be in the ETJ unless the city owns the property
- Annexation areas must be contiguous to the city's corporate limits



Two public hearings must be held, having provided proper public notice.

- Strip annexations less than 1,000 feet in width are prohibited unless initiated by the owner of the land or the city is contiguous to the strip on at least two sides
- With some exceptions, cities may not annex additional land from strips less than 1000 feet in width or from areas that are in the ETJ only because of the previous annexation of strips less than 1000 feet in width
- The total amount of land annexed in any calendar year cannot be more than 10 percent of the city's total area as of January 1 of that year. If a city does not annex the full 10 percent, it may carry over the unused allocation for use in subsequent years up to a maximum 30 percent of the city's total area as of January 1 of that year. There are a number of exceptions to this rule. Government property is not included in the total nor is land which is being annexed at the request of a majority of its owners or residents

Hearing and Notice Requirements

- For MAP-exempt areas two public hearings must be held on or after the 40th day but before the 20th day before the date of first reading of the annexation ordinance
- For MAP areas two public hearings must be held within 90 days of releasing the inventory of services (this is described in detail in the MAP process of this chapter)
- Public notice of the hearings must be published in a local newspaper at least 11 days but not more than 20 days before the hearings
- Notice of each hearing must also be posted on the city's website at least 11 days but not more than 20 days before the hearings
- If more than 20 permanent adult residents of the area proposed for annexation protest the annexation within 10 days after publication of the notice (10% of residents in the case of MAP-exempt areas), one of the public hearings must be conducted in the area proposed for annexation or in the nearest suitable public facility if the annexation area does not have a suitable site
- Notice must be sent to property owners in areas covered by the less than 100 tract exemption 30 days prior to the first hearing. Property owners in MAP areas must be notified of the proposed annexation within 89 days of MAP



adoption

- Notice must be sent to each public entity (as defined by Sec. 43.053) and utility service provider that provides services in the proposed annexation area (service providers in MAP areas receive notice by certified mail within 89 days of MAP adoption; providers in areas covered by the less than 100 developed tract exemption receive standard mail notice 30 days prior to the first hearing)
- Notice must be sent to each railroad company that serves the annexing city and is on the city's tax rolls if the railroad has right-of-way in the proposed annexation area (railroads in MAP areas receive notice by certified mail within 89 days of MAP adoption; railroads in areas covered by the less than 100 developed tract exemption receive standard mail notice 30 days prior to the first hearing)
- Cities must notify all school districts within the annexation area of the hearings. The notice must include an estimate of any financial impact to the districts and proposals to mitigate the impacts on the districts

Service Plan Requirements

As part of the public hearing process for all annexations, the city must present a service plan for the area proposed for annexation. The service plan is essentially a contract between the city and the people being annexed and is valid for a period of ten years. Any person residing or owning property in an annexation area may enforce a service plan by applying for a writ of mandamus in which case the city has the burden of proving that the services were provided in accordance with the service plan. Residents can also seek arbitration to enforce service plan conditions. Failure to fulfill the service plan can result in disannexation, the refunding of taxes paid for services not received, and a civil penalty.

Prior to publication of the first annexation hearing notice, an annexation service plan meeting the requirements of Sec. 43.056 must be prepared

The service plan must provide for the extension of the following services immediately upon annexation if the city provides the services:

- Police protection;





- Fire protection;
- Solid waste collection (residents of annexation areas have the option of continuing to use private service providers for up to two years);
- Maintenance of public water and wastewater facilities that are not in the service area of another water or wastewater utility;
- Maintenance of public roads and streets, including road and street lighting;
- Maintenance of public parks, playgrounds, and swimming pools; and,
- Maintenance of any other publicly owned facility, building, or service

Service Issues

Services issues fall into three categories:

1. The level of service for general government services
2. Capital improvements and the provision of water and wastewater service
3. The impact on services in the balance of the city

Level of Service

In general, if an annexation area is receiving a lower level of general government services infrastructure, and infrastructure maintenance than is available in the city, the city must provide the annexation area with a level of services that is comparable to areas inside the city with similar topography, land use and population density. If an annexation area is receiving a level of service equal to what is available in the city, the service plan must maintain the existing levels. If an area to be annexed is receiving a higher level of service, infrastructure, and infrastructure maintenance than is available in the city, the service plan need only provide the area with a level of service comparable to areas inside the city with similar topography, land use and population density. The city, however, must continue to operate and maintain the existing public infrastructure and facilities at the higher pre-annexation level.

The city must provide the annexation area with a level of services that is comparable to areas inside the city



Capital Improvements and Water and Wastewater Service

The service plan must include a capital improvements program element for capital projects necessary to provide full municipal services. State law defines full municipal services to include water and wastewater service. If the city owns a water and wastewater utility and the annexation area is not in the service area of another utility the service plan must provide for the construction of capital facilities necessary to extend water and/or wastewater service within 2 1/2 years unless the plan includes a schedule for providing full services in which case the city has 4 1/2 years. Capital facility construction deadlines do not apply if the annexation was consensual and the landowners agreed that the facilities are not needed within the specified period.

State law defines full municipal services to include water and wastewater service.

The service plan may state that water and wastewater service will be provided in accordance with the city's utility extension policies. Typically these policies do not provide for the extension of utilities to unplatted land. A summary of the city's water and wastewater utility extension policies is required to be attached to the annexation service plan.

The water and wastewater component of the annexation service plan may not:

- Require the creation of another political subdivision (such as a water district)
- Require a landowner in the area to fund the required capital improvements in a manner inconsistent with state impact fee legislation unless otherwise agreed to by the landowner

Impact on Services to the Balance of the City

Service issues also include the impact of annexation on services in the balance of the city. A city may not provide services to an annexation area in a manner that would result in more than a negligible reduction in the level of fire, police or emergency medical services provided to areas in the existing city.

Annexation Processes

As noted above, Chapter 43 sets out different process for consensual, MAP and MAP-exempt annexations.



The Consensual Annexation Process

Typically, consensual annexations are initiated by landowners as projects go through the development process. These annexations can be processed under Sec. 43.028 or as a MAP-exempt area under Subchapter C-1 of Chapter 43.

Sec. 43.028 is for vacant tracts that are less than one-half mile in width. Under the Sec. 43.028 process, the landowner petitions the City Council for annexation and the Council has 30 days to accept the annexation petition. Following acceptance of the petition, the City goes through the notification and hearing processes described above and then may complete the annexation process by adopting an annexation ordinance. First reading (at least) of the annexation ordinance must take place within 40 days of the date of the first hearing and not less than 20 days from the second hearing. The annexation must be completed within 90 days of first reading of the annexation ordinance.

The Subchapter C-1 process for consensual annexations include the notices and hearings described above but does not require separate acceptance of the petition. Land eligible for the Sec. 43.028 process may also be annexed through the C-1 process.

MAP Process

To annex an area with more than 99 tracts on which one or more residential dwellings are located on each tract a city must first include the area in its municipal annexation plan (MAP). The MAP is a three-year process that begins on the effective date of plan adoption.

Within 89 days of the effective date of plan adoption, the city must notify each property owner in the proposed annexation area and each of the public or private entities that provide municipal-type services to the proposed annexation area. In addition, the plan must be posted on the city's website.

Following notification, the city must prepare an inventory of services provided to the proposed annexation area. The information for the inventory comes from the service providers themselves. The city's notification to area service providers must include a request for information regarding the types and levels of services and facilities they were providing in the year preceding adoption of the MAP. If a service provider fails to submit the required information within 90 days of receiving notification, the city is not obligated to include



that information in its inventory. The city may monitor the services provided in an area proposed for annexation to verify the inventory information provided by the service provider.

The following types of information are required for infrastructure (utilities, roads, drainage etc):

- An engineering report that describes the physical condition of all infrastructure elements in the area
- A summary of expenditures for that infrastructure

The following information is required for fire, police and emergency medical services:

- Average dispatch and delivery times.
- Equipment schedules.
- Staffing schedules including certification and/or training levels.
- A summary of operating and capital expenditures.

Within 60 days of receiving the requested information, the city must complete the inventory and make it public. Only those services and facilities provided in the year preceding the date of plan adoption are to be included in the inventory. The inventory becomes a baseline by which the city's service plan will be measured and a basis for negotiations during the annexation process.

Within 90 days of making the inventory available for public review, the city must hold two annexation public hearings. A preliminary service plan must be presented and explained at each of the hearings. After completing the hearings, the city negotiates the terms of the final service plan with five representatives from the area who are appointed by the County Commissioners Court. In the case of water districts (MUDs, WCIDs etc.), the city negotiates with the district's board.

The final service plan must be completed prior to the first day of the tenth

MAP Process

1. Notify

- Property owners
- Service providers
- Railroad companies
- School districts
- Public

2. Inventory:

- Services
- Engineering report and expenditures of areas infrastructure
- First responders information needs

3. Make inventories public

4. First public hearing with preliminary service plan

5. Second public hearing with preliminary service plan

6. Negotiations

7. Plan adoption

8. Final service plan

9. Annexation three years following adoption



month following completion of the inventory of services, or approximately 17 months after plan adoption. If an agreement cannot be reached between the City and the area's representatives, the law provides for a binding arbitration process. The scope of the arbitration is, however, limited to issues relating to the service plan. Including arbitration, the negotiation phase of the process can be completed within 21 months of plan adoption. The city pays the cost of arbitration unless it can be shown the negotiators requested arbitration in bad faith or the request was groundless or for the purpose of harassment in which case the negotiators pay the costs.

The city and the area's representatives may also negotiate terms of a contract for the provision of services in lieu of annexation. The terms of this contract can be fairly broad and include permissible land uses, compliance with ordinances, the funding of services and any other term to which the parties agree will resolve the dispute including the creation of any special district allowed by law.

Be aware that for property to be on the tax rolls for the following year, it must be annexed by December 31.

The annexation itself cannot take place until the third anniversary of the effective date of plan adoption and must be completed before the 31st day following the third anniversary of adoption of the plan. If the process is not completed within that time frame, the city may not annex the area for five years. In the context of these timing considerations, planners need to be aware that for property to be on the tax rolls for the following year, it must be annexed by December 31. The plan's effective date needs to be early enough to allow for a December 31 annexation date.

Note that virtually all developed water districts (MUD, WCIDs etc) meet the criteria for inclusion into a city's MAP prior to annexation. If a district that has been added to the MAP requests a Strategic Partnership Agreement (SPA) the city must negotiate and enter into an SPA. Districts must submit their request for an SPA within 61 days after second annexation public hearing. State law provides for an arbitration process if the city and the district cannot agree on the terms of the SPA.

The terms of the SPA can be fairly broad and include limited purpose annexation and setting a date certain for future annexation. If a city annexes a portion of a district for limited purposes under an SPA, the city may impose its sales tax in that portion of the district.



A district with an SPA can be converted to a Limited District following its full purpose annexation and continue to collect taxes and fees to maintain its parks, provide solid waste services and enforce deed restrictions.

A MAP may be amended to include new annexation areas, however, similar timing requirements would apply to each added area. Areas may also be removed from the MAP. If an area is removed within the first 18 months following its inclusion in the plan, the area may not be amended again to re-include the area until the one-year anniversary of its removal. Any area removed after the first 18 months would be subject to a two-year moratorium before it could be re-included in the MAP. Property owner notification is required if an area is removed from the plan after the first 18 months.

MAP-exempt Process

The process for the non-consensual annexation of areas with fewer than 100 tracts on which one or more residential dwellings are located on each tract and of other MAP-exempt areas is set out in Subchapter C-1.

The hearing and notice requirements are described in the Hearings and Notice Section of this chapter. Public notice of the hearings must be published in a local newspaper at least 11 days but not more than 20 days before the hearings. Two public hearings must be held on or after the 40th day but before the 20th day before the date of first reading of the annexation ordinance. As with the consensual process, the non-consensual MAP-exempt process requires first reading (at least) of the annexation ordinance within 40 days of the date of the first hearing and not less than 20 days from the second hearing. The annexation must be completed within 90 days of first reading of the annexation ordinance.

Prior to publication of the first annexation hearing notice, an annexation service plan meeting the requirements of Sec. 43.056 must be prepared and presented at the public hearings. The service plan can be refined during the annexation process but there can be no reduction in the level of services from what was presented during the public hearings.

Post-annexation Requirements for All Full Purpose Annexations



- Cities must reimburse the Emergency Service District (ESD) that served the area prior to annexation a pro rata share of the debt issued and facilities and equipment purchased to serve the annexation area (there are limitations on what the ESD may claim)
- Annexations are not effective until the ESD has been notified
- Cities are required to submit applications to the U.S. Department of Justice for preclearance at the earliest date permitted by federal law and after receiving preclearance must permit residents to vote in the next municipal annexation.
- A city that changes its boundaries or the boundaries of the districts used to elect city council members must, within 30 days, notify the county voter registrar of the boundary change and provide the registrar with a map of the boundary changes in a format that is compatible with the mapping format used by the registrar

Continuation of Uses and Zoning

Existing or proposed developments:

- Have continuation of nonconforming use rights
- Can be zoned, unless vested under Ch 245 of LGC

Landowners of existing or proposed developments have continuation of use rights. Essentially these rights represent an extension of legal nonconforming use status.

Following annexation, a city can not prohibit the continuation of a legal land use if the use was in existence on the date annexation proceedings were instituted (first reading of the annexation ordinance) or prohibit a landowner from beginning to use land if the use was planned 90 days before the effective date of the annexation and a complete application for any required government permit was submitted before the date annexation proceedings were instituted.

Zoning after annexation is a legislative function of the city council, however, projects vested under Chapter 245 of the Local Government Code are not subject to zoning regulations that affect property classification. Vested projects are also not subject to zoning regulations that affect landscaping, tree preservation, or open space/park dedication.



Limited Purpose Annexation

Subchapter F of Chapter 43 authorizes cities with populations in excess of 225,000 to annex territory for the limited purposes of applying planning, zoning, health, and safety ordinances to the area. Areas annexed for limited purposes must be annexed for full purposes within three years unless this condition is waived by the landowner. Areas annexed for limited purposes must be contiguous to the full purpose city limits unless the landowner consents to non-contiguous annexation. Residents in a city's limited purpose jurisdiction may vote in municipal elections but do not pay city taxes.

Limited purpose annexation can be a useful tool in implementing a city's comprehensive plan, but its use must be closely coordinated with capital improvements planning. As part of the process for limited purpose annexation, a city must prepare a planning study and a regulatory plan for the area proposed for annexation. With the exception of consensual limited purpose annexations in which the land owner waives or postpones full purpose annexation, the annexing city must take specific steps leading to full purpose annexation in each of the years preceding full purpose annexation (see right).

Failure to meet such milestones may result in a court order requiring either full purpose annexation or disannexation of the area.

Following annexation at the end of the third year, the city has up to 4½ years in which to provide the necessary capital improvements.

Disannexation

A majority of the voters of an area annexed for full purposes by a home rule city may petition the city for disannexation if the city fails to provide the services called for in the annexation service plan or otherwise fails to meet the service requirements of the Local Government Code. If the city fails to disannex the area, any signer of the petition may seek disannexation in district court. If the area is disannexed by the city following receipt of the petition or by district court, it can not be reannexed for ten years. Following disannexation, the city must refund the taxes and fees collected less the amount spent for the direct benefit of the area during the period in which it was in the city. A city cannot disannex a portion of an annexation area.

Limited Purpose Annexation Steps

- By the end of the first year the city must prepare a land use and intensity plan as a basis for services and capital improvements planning;
- By the end of the second year the city must include the area in its long-range financial forecast capital improvements plan; and
- By the end of the third year the city must add the projects necessary to serve the area into its capital improvements plan and identify potential funding sources



Annexation is critical to the long-term well being of cities and should not be performed on an ad hoc basis

Disannexation procedures for general law cities permit fifty (50) or more voters of an area to request a disannexation election. If a majority of the voters in the election vote for disannexation, the area is disannexed. However, the area may not be disannexed if it would result in the city becoming less than one mile square or having less than one mile in diameter measured at the center of the original municipal boundaries. In addition, if the city has any debt, the area is not released from its pro rata share of that indebtedness.

The Local Government Code also provides for the disannexation of very low density or unimproved acreage by general law cities and of unimproved land by home rule cities of certain population in counties of certain population.

Annexation Planning

Because annexation is so critical to the long-term well being of cities, it needs to be carried out in accordance with established policies and not on an ad hoc basis. A city's comprehensive plan should include ETJ and annexation-related goals and policies. Every ETJ and annexation proposal should be evaluated in terms of how it fits with those goals and policies. Annexation policies should include the use of criteria with which to select areas to be annexed from the range of potential annexation areas. The policies must also be aligned with the requirements of Chapter 43, other applicable statutes and the city's charter.

Annexation planning should also be coordinated with the city's financial and capital improvements plans and be supported by the city's water and wastewater service extension policies. Successful annexation planning and ETJ management is dependent upon a robust water and wastewater utility and upon active long-range capital improvements planning.

ETJ Management

Annexation planning is a continuous process that begins with management of the extraterritorial jurisdiction (ETJ).

ETJ management issues faced by all cities with ETJs include petitions for creation of water districts (MUDs and WCIDs) and requests for ETJ exchanges and releases. Approval of these sorts of petitions and requests is discretionary on the part of cities and need to be evaluated in terms of their impact on annexation. The use of strategic partnership agreements can provide opportuni-



ties for cities when annexation and the provision of services is not an option.

Another ETJ management issue is the development of large projects in the ETJ that cannot be immediately annexed. Annexation of a residential project after it is developed can be problematic and developed projects in the ETJ may not conform with all city standards or with the land use element of the Comprehensive Plan. These issues can be dealt with through the negotiation of annexation/development agreements while the project is still in the conceptual stage. Annexation/development agreements can also be negotiated with the owners of tracts prior to their entering the development process.

As noted earlier in this chapter, an agreement must be offered before properties covered by agricultural, wildlife management, or timber management exemptions can be annexed. Section 43.035 states that a city may not annex an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers a development agreement to the landowner that would:

- Guarantee the continuation of the ETJ status of the area
- Authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber production.

The landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. To annex the property the City must still meet all the requirements of Chapter 43.

A development agreement under Section 43.035 does not extend the ETJ but it does establish contiguity for the purpose of annexing adjacent land within the existing ETJ.

The guarantee of ETJ status is voided when the landowner files a subdivision application or other development application.

Section 43.035 is linked to Section 212.172. Section 212.72 is fairly broad in outlining what may be in a development agreement. There is no requirement in Sec. 43.035, however, for cities to offer anything more than a guarantee of the continuation of ETJ status until a subdivision application or other devel-



opment application is filed. In return, a city gains land use regulatory control over the property and the assurance that the area will be annexed prior to development. Given that Section 43.035 agreements do not create service obligations, they can be almost as useful as annexation itself.

When combined with the broad language of Sec. 212.172, development agreements have the potential to be a valuable tool for cities and developers to cooperatively master plan ETJ areas prior to annexation and zoning. These agreements can also be a tool for implementing the comprehensive plan.

Strategic partnership agreements (SPAs), annexation/development agreements and limited purpose annexation have created new opportunities for public/private partnerships in the ETJ. These partnerships still need to be evaluated in terms of their relationship to the comprehensive plan.

The Annexation Plan

In addition to the three-year annexation plan required by statute, cities should develop mid-range annexation plans. A mid-range plan should look out 10 years and include all the potential annexation areas in the ETJ. The mid-range plan should be reviewed on an annual basis to identify areas for annexation that year and to add additional areas for future evaluation. The city departments that deliver the municipal services required by Chapter 43 need to be involved in developing the mid-range annexation plan and in the selection of areas for annexation. Facility and service requirements for mid-range areas should be reflected in the city's financial forecast and CIP. The mid-range plan should be based on the annexation policies of the comprehensive plan and be implemented through regular annexation programs that include MAP, MAP-exempt and consensual annexations.

Annexation Evaluation Process

As part of the annual review of the Mid-term Plan the staff should look at each area in terms of its readiness for annexation. Each potential area should be evaluated on its unique land use, environmental, fiscal and demographic characteristics. The criteria listed below are typical of the criteria used in evaluating a property for annexation.



- Is the proposed annexation area contiguous to the existing City limits or can contiguity can be established?
- Is there an agreement (Strategic Partnership, Annexation/Development Agreement etc.) with an established annexation date/trigger point?
- Is the area a MAP area or is it MAP-exempt
- Is the property covered by an agricultural, wildlife management, or timber management exemption
- Has a water and/or wastewater service extension request been filed/approved for the property?
- Can the City serve the property with existing water and/or wastewater facilities?
- Has the property been subdivided or is otherwise “legal”?
- Is the area within the certificated (CCN) area of another water or sewer service provider?
- Can the area be provided with full municipal services with existing City resources?
- Is a CIP or budget amendment needed to provide services?
- Has a development proposal been submitted/approved for the property?
- Does the annexation create an opportunity for further annexations/ETJ expansions in the short term?
- Are there emergency service district (ESD) related expenses associated with the annexation?
- Is the area inside a library district (library districts impact may impact sales tax receipts)
- Is there a positive financial impact for the City?

**Criteria to evaluate a property
for annexation**



Fiscal Impact Analysis

In recent years, fiscal impact analysis has become a critical part of annexation planning and implementation. Given the fiscal implications of annexation, the cost of providing municipal services needs to be estimated and weighed against the anticipated revenues of each annexation program.

First year service costs will almost always exceed revenues because of the lag time between annexation and the collection of taxes. Annexations may also require one-time only expenditures for capital facilities. To spread these costs over several years and to provide a better picture of the operating costs associated with those facilities, the fiscal impact of annexations should be estimated over a multi-year time frame. Fiscal impact analyses for annexation are typically based on the time period used by the city's finance department for budgetary planning or on the ten-year period of the annexation service plan.

Many cities use a fiscal impact model to estimate the impacts of annexations on municipal revenues and expenditures. These models vary in their sophistication. It should be noted that complexity does not necessarily equate with accuracy. Performing fiscal impact analyses does not mean that only areas with positive cash flow should be annexed. There will be instances when health, safety, environmental or other factors will override fiscal considerations and an area will be proposed for annexation despite its fiscal impact. An accurate fiscal impact analysis becomes especially critical in these instances.

A Final Note Regarding Implementation

A successful annexation plan must include attention to implementation. Implementation of the plan begins with meeting the procedural requirements of State law and includes monitoring the delivery of services and the timely construction of facilities. It cannot be overemphasized that implementation extends through the life of the annexation service plan.