

Municipal Annexation

by Alan Bojorquez

*26th Annual Election Law Seminar
December 5, 2014
Austin, Texas*

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ABOUT THE AUTHOR

Alan Bojorquez, *Principal*
Bojorquez Law Firm, P.C. (Austin, Texas)

Alan represents cities across the state as City Attorney or Special Counsel. Before going into private practice, he was a staff attorney for the Texas Municipal League. Alan graduated from Texas Tech University with his Bachelor of Arts in English, Master of Public Administration, and Doctor of Jurisprudence. He is on the Board of Directors of the Texas City Attorneys Association, and is Texas Chairperson for the International Municipal Lawyers Association. Alan is the 2015 Chairperson of the University of Texas School of Law's annual *Land Use Planning Conference*. He authors the TEXAS MUNICIPAL LAW & PROCEDURE MANUAL (6th Ed.).

November 20, 2014

NOTE: This paper is an excerpt from the Texas Municipal Law and Procedure Manual (6th Ed.), by Alan Bojorquez, published by the Texas Municipal Clerks Association. The complete text is available at <http://municlerks.unt.edu/>

§19.11. Introduction to Annexation.

(a) Procedural Requirements. A careful reading of Chapter 43 of the Texas Local Government Code before **each** proposed annexation will avoid embarrassing and time-consuming errors. Home-rule municipalities may have additional requirements in their charters. In some cases there will be a time limit for completion of the annexation. In other cases an annexation plan must be prepared prior to initiation of annexation. Failure to comply with any detail in the complicated requirements for annexation may result in the annexation being overturned. Because annexation of territory and changes to municipal boundaries are so vital to municipal government, it is worthwhile to consult an attorney experienced in municipal law before an annexation.

Tip: Procedurally defective annexations may have been cured by a validation statute. There was a series of validating statutes beginning with V.T.C.S. art. 974d-1, art. 974d-2, etc. Tex. Gov't Code §311.031 repealed most of these statutes enacted prior to V.T.C.S. art. 974d-36 effective May 20, 1987. The repealing legislation and Tex. Gov't Code §311.031 provided repeal did not void or affect any validation. Unfortunately, West Publishing (the company that prints and maintains the state codes) removed them from the Vernon's statutes; thus, it is difficult to locate each one to determine if it applies. Each was worded differently and some were very broad validations, while others were narrow. Many validate city council actions other than annexations.

(b) Definitions.

(1) **Public entity:** a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a "special district." Tex. Loc. Gov't Code §43.053(a). The term is used a number of times in this chapter in connection with statutory provisions for providing notice, and setting out requirements of information to be provided to and from such entities.

(2) **Special district:** a municipal utility district, water control and improvement district, or other district created under Texas Constitution Article 3, §52 or Art. 16, §59. Tex. Loc. Gov't Code §43.052(a) as:

***Caution:** This Manual omits several provisions applicable only to Houston.

(c) Pre-existing Land Use. Once property is annexed, the municipality's ordinances and regulations apply to the property. However, Texas Local Government Code §43.002 provides that even a valid zoning ordinance or land use regulation may not prohibit a person in a newly annexed area from:

(1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or

(2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if

(A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and

(B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.

(d) Application. A “completed application” is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.

(e) Regulations. A municipality is not prohibited under Texas Local Government Code §43.002 from imposing:

- (1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Texas Local Government Code 243.002;
- (2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Tex. Gov’t Code §2306.581;
- (3) a regulation relating to preventing imminent destruction of property or injury to persons;
- (4) a regulation relating to public nuisances;
- (5) a regulation relating to flood control;
- (6) a regulation relating to the storage and use of hazardous substances;
- (7) a regulation relating to the sale and use of fireworks; or
- (8) a regulation relating to the discharge of firearms.

§19.12. Involuntary Annexation.

General-law municipalities (Types A, B, and C) cannot annex territory involuntarily, except in certain limited instances. *Sitton v. City of Lindale*, 455 S.W.2d 939 (Tex. 1970). They generally can annex territory only when requested by the owners and / or inhabitants, as set out in Tex. Loc. Gov’t Code Chapter 43. A home-rule municipality may annex territory involuntarily, but must follow the procedures set out in its charter. All municipalities must follow the procedures set out in the Texas Local Government Code for both voluntary and involuntary annexations.

Tip: A municipal ordinance defining the boundary of an annexed area is conclusively presumed to have been adopted with the consent of all appropriate persons (except other municipalities) if: (1) two years has passed; and (2) no legal challenges to the annexation have been brought during that two-year period. Tex. Loc. Gov’t Code §43.901.

§19.13. Municipal Annexation Plan.

(a) Need for Annexation Plan. A municipality **shall** prepare an annexation plan that specifically identifies annexations that may occur beginning on the 3rd anniversary of the date the annexation plan is adopted. Tex. Loc. Gov’t Code §43.052(c).

Tip: Even if a municipality has no intention of involuntarily annexing any territory, as a precautionary measure the municipality might consider passing an ordinance similar to the form in Appendix A Form 3.

(b) Amendments to Plan. The plan may be amended from time to time, however, each amendment will apply to annexations that may occur beginning on the 3rd anniversary of the date the plan is amended. Tex. Loc. Gov’t Code §43.052(c).

(c) Plan Has Three Year Requirement. Before conducting an annexation which is not described in the exceptions to the plan requirement, a municipality shall prepare an annexation plan that specifically identifies annexations that may occur beginning on the 3rd anniversary of the date the annexation plan is

adopted. Tex. Loc. Gov't Code §43.052(c). This means that a municipality thinking about involuntary annexations must plan at least three years in advance.

§19.14. Exceptions to Plan Requirements.

(a) Annexation Without Plan. An annexation plan is not required in the following circumstances under Texas Local Government Code §43.052(h):

(1) the area contains fewer than 100 separate tracts of land on which 1 or more residential dwellings are located on each tract;

(2) the area will be annexed by petition of more than 50 percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or real property owners as provided in the sections discussing voluntary annexation which include:

(A) Texas Local Government Code §43.023 for general-law municipalities with a population of more than 5,000;

(B) Texas Local Government Code §43.024 for Type A municipalities;

(C) Texas Local Government Code §43.025 for Type B municipalities;

(D) Texas Local Government Code §43.026 for Type A municipality annexing area it owns;

(E) Texas Local Government Code §43.028 for any municipality annexing on petition of area landowners; and

(F) Texas Local Government Code §43.029 certain small municipalities annexing on petition of school board.

(3) the area is or was the subject of:

(A) an industrial district contract under Texas Local Government Code §42.044; or

(B) a strategic partnership agreement under Texas Local Government Code §43.0751;

(4) the area is located in a colonia, as that term is defined by Tex. Gov't Code §2306.581;

(5) the area is a navigable stream in the ETJ of a general-law municipality which annexes the area under Texas Local Government Code §43.027; or the area is annexed pursuant to a mutual change in boundaries between adjacent municipalities under Texas Local Government Code §43.031;

(6) the area is located completely within the boundaries of a closed military installation; or

(7) the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from:

(A) imminent destruction of property or injury to persons; or

(B) a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.

(b) Separate Annexations Prohibited. A municipality may not circumvent the requirements for a municipal annexation plan under Texas Local Government Code §43.052 by proposing to separately annex 2 or more areas described in Texas Local Government Code §43.052(h) (as set out above) if no reason exists under generally accepted municipal planning principles and practices for separately annexing the areas. If a municipality proposes to separately annex areas in violation of these requirements, a person residing or owning land in the area may petition the municipality to include the area in the municipality's annexation plan. If the municipality fails to take action on the petition, the petitioner may request arbitration of the dispute. The petitioner requests appointment of an arbitrator and the municipality shall pay the cost of arbitration. Tex. Loc. Gov't Code §43.052(i).

(c) Plan Not Applicable to Annexation Before December 31, 2002. Although a municipality is required to adopt a 3-year plan, it applies in its entirety only after December 31, 2002. Until that time, annexations which are not on the exemption list of Texas Local Government Code §43.052(h), may be accomplished under the previous law with some restrictions. (See the Historical and Statutory Notes following Texas Local Government Code §43.052.) The land to be annexed must not be included in the 3-year plan. The changes to the following statutes will apply to these pre-December 31, 2002 annexations:

- (1) Continuation of Land Use provisions. Tex. Loc. Gov't Code §43.002;
- (2) Tex. Loc. Gov't Code §43.054 - Width Requirements;
- (3) Tex. Loc. Gov't Code §43.0545 - Using prior strip annexation to meet adjacency requirements;
- (4) Tex. Loc. Gov't Code §43.056(b)(c)(e)(f)(g)(l)(m)(n) and (o) - Service plan requirements;
- (5) Tex. Loc. Gov't Code 43.121(a) - Limited Purpose Annexation by Home-Rule Municipality.

§19.15. Effect of Plan on Special Districts.

At any time during which an area is included in a municipality's annexation plan, a municipal utility district or other special district that will be abolished as a result of the annexation, excluding an emergency services district, in which the area is located may not without the consent of the municipality:

- (1) reduce the tax rate applicable to the area if the amount that remains in the debt service fund after reduction and after subtracting the amount due for debt service in the following year is less than 25 percent of the debt service requirements for the following year;
- (2) voluntarily transfer an asset without consideration; or
- (3) enter into a contract for services that extends beyond the 3-year annexation plan, other than a contract with another political subdivision for the operation of water, waste water, and drainage facilities.

If a plan includes a special district that will be abolished, the municipality should begin monitoring the agendas and actions of the district's governmental body. The fact that the law forbids the special district from taking certain actions does not mean that it will not take the action either deliberately or accidentally. If the municipality is aware of the proposal to take the action or the fact that the action was recently taken, a court can be asked quickly to set aside the action or prevent it.

§19.16. Removal of Area from Annexation Plan.

A municipality may amend its annexation plan to remove an area proposed for annexation. Tex. Loc. Gov't Code §43.052(e). If the plan is amended to remove an area during the first 18 months after an area is included in a 3-year annexation plan, then the municipality may not amend the plan to again include the area for 1 year after the date of the amendment. But if the amendment to remove the area occurs during or after the 18 months following the month an area is included in the 3-year annexation plan, then the municipality must wait 2 years before again amending the plan to include the area. Tex. Loc. Gov't Code §43.052(e).

§19.17. Deadlines for Completion of Annexation Plan.

Once a 3-year annexation plan has been adopted, annexation of all areas under the plan, which have not been removed from the plan as set above, must be completed before the 31st day after the 3rd anniversary of the date the area was included in the annexation plan. (The area could be included in the original plan or by amendment.) If the annexation is not completed within that time, the municipality may not annex the area before the 5th anniversary of the last day for completing an annexation. Tex. Loc. Gov't Code §43.052(g).

§19.18. Notice of Plan Adoption or Amendment.

If a municipality adopts or amends an annexation plan it must give written notice within 90 days of the date of adoption or amendment to:

(1) each property owner in the affected area. Property owners are determined by appraisal records furnished by the appraisal district for each county in which the affected area is located;

(2) each public entity defined in Texas Local Government Code §43.053 as including a municipality, county, fire protection service provider, including the volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a “special district.” (“Special district” is defined under Texas Local Government Code §43.052(a) as a municipal utility district, water control and improvement district, or other district created under Tex. Const. Art. 3, §52 or Art. 16, §59); **and**

(3) each railroad company that serves the municipality and is on the municipality’s tax roll if the company’s right-of-way is in the area proposed for annexation.

§19.19. Posting Plan on the Internet.

If a municipality has an internet website, the municipality is required by Texas Local Government Code §43.052(j) to:

- (1) post and maintain the posting of its annexation plan on its internet website;
- (2) post and maintain the posting on its website of any amendments to include an area in its annexation plan until the date the area is annexed; and
- (3) post and maintain the posting on its internet website of any amendments to remove an area from its annexation plan until the date the municipality may again include the area in its annexation plan.

☛*Caution: Printing a dated copy of the plan, and each amendment, as they are posted on the web site will help prove that this requirement was met. Regularly printing dated copies of the plan and the amendments will allow you to prove that the plan was continuously and properly posted as required. Take steps to prevent an opponent of an annexation from hacking into your web site, and changing or obliterating the plan so as to use this provision to attack the annexation.

§19.20. Inventory of Services and Facilities.

(a) Public and Private Providers. After adopting an annexation plan or amending an annexation plan to include additional area a municipality shall compile a comprehensive inventory of services and facilities provided by public and private entities directly or by contract in each area proposed for annexation. Tex. Loc. Gov’t Code §43.053(b). The inventory of services and facilities must include all services and facilities the municipality is required to provide or maintain upon annexation. Tex. Loc. Gov’t Code §43.053(b). In the notice to public entities sent out within 90 days after a plan is adopted, the municipality shall request from each public or private entity that provides services or facilities in each area proposed for annexation the information necessary to compile the inventory. Tex. Loc. Gov’t Code §43.053(c). Each public or private entity shall provide to the municipality the information held by the entity that is necessary to compile the inventory not later than the 90th day after the date the municipality requests the information unless the entity and the municipality agree to extend the period for providing the information. Tex. Loc. Gov’t Code §43.053(c). The information provided by the public or private entity must include:

- (1) the type of service provided;
- (2) the method of service delivery; and

(3) all information prescribed by the subsections dealing with utility facilities, roads, other infrastructure and with police, fire, and emergency medical services as set out below. Tex. Loc. Gov't Code §43.053(c).

(b) Time Period Covered by Inventory. The information required in the inventory shall be based on the services and facilities provided during the year preceding the date the municipality adopted or amended the annexation plan. Tex. Loc. Gov't Code §43.053(d).

(c) Facilities Inventory Requirements. Utility facilities, roads, drainage structures, and other infrastructure provided or maintained by public or private entities, the inventory must include:

(1) an engineer's report that describes the physical condition of all infrastructure elements in the area; and

(2) a summary of capital, operational, and maintenance expenditures for that infrastructure. Tex. Loc. Gov't Code §43.053(e).

(d) Police, Fire, and EMS Inventory Requirements. Police, fire, and emergency medical services provided by public or private entities, the inventory must include for each service:

(1) the average dispatch and delivery time;

(2) a schedule of equipment, including vehicles;

(3) a staffing schedule that discloses the certification and training levels of personnel; and

(4) a summary of operating and capital expenditures. Tex. Loc. Gov't Code §43.053(f).

(e) Public Inspection of Inventory. The municipality must complete the inventory and make the inventory available for public inspection on or before the 60th day after the date the municipality receives the required information from the service providers set out above. Tex. Loc. Gov't Code §43.053(g).

(f) Verification of Inventory Data. The municipality may monitor the services provided in an area proposed for annexation and verify the inventory information provided by the service provider. Tex. Loc. Gov't Code §43.053(h).

Tip: In regards to annexations that do not require a 3-year annexation plan, the annexations statutes fail to provide instructions for notices and hearings. It is wise for municipalities conducting annexations without 3-year plans to follow the same notice and hearing requirements.

§19.21. Hearing Requirements for Annexation.

(a) Timing. Before instituting annexation proceedings and not later than the 90th day after the date the inventory is available for inspection, the city council must conduct 2 public hearings at which persons interested in the annexation are given the opportunity to be heard. Tex. Loc. Gov't Code §43.0561(a).

(b) Location. At least 1 of the hearings must be held in the area proposed for annexation if:

(1) a suitable site is reasonably available, and

(2) more than 20 adults who are permanent residents of the area file a written protest of the annexation with the municipal clerk within 10 days after the date of the publication of the notice of the hearing. Tex. Loc. Gov't Code §43.0561(b). Such a protest must state the name, address, and age of each protester who signs. Tex. Loc. Gov't Code §43.0561(b).

If a suitable site is not reasonably available in the area proposed for annexation, the hearing may be held outside the area proposed for annexation if the hearing is held in the nearest suitable public facility. Tex. Loc. Gov't Code §43.0561(b).

§19.22. Notice of Hearing for Annexation.

(a) Publication Requirements. Notice of the hearings must be published in a newspaper of general circulation in the municipality and in the area proposed for annexation. Tex. Loc. Gov't Code §43.0561(c). Publish the notice at least once on or after the 20th day but before the 10th day before the date of the hearing. If the municipality has an internet website then notice of the hearing must also be posted on or after the 20th day but before the 10th day before the date of the hearing. It must remain posted on the website until the day of the hearing. Tex. Loc. Gov't Code §43.0561(c)

(b) Notification by Mail. A municipality must give additional notice by certified mail to:

- (1) each public entity as defined above by Texas Local Government Code §43.053, and utility service provider that provides services in the area proposed for annexation; and
- (2) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation. Tex. Loc. Gov't Code §43.0561(c).

§19.23. Negotiations by Municipalities with a Population of less than 1.6 Million for Annexation

(a) Provisions for Services after Annexation. After holding the 2 hearings required by Texas Local Government Code §43.0561, as described above, a municipality with a population of less than 1.6 million (all municipalities except Houston), and the property owners of the area proposed for annexation shall negotiate for the provision of services to the area after annexation or for the provision of services to the area in lieu of annexation under Texas Local Government Code §43.0563 which is discussed below. Tex. Loc. Gov't Code §43.0562(a)(1).

(b) Selection of Representatives for Annexation Negotiations. For purposes of these negotiations the commissioners court of the county in which the area proposed for annexation is located shall select five representatives to negotiate with the municipality for the provision of services to the area after annexation. If the area proposed for annexation is located in more than one county, the commissioners' court of the county in which the greatest number of residents reside shall select three representatives to negotiate with the municipality and the commissioners courts of the remaining counties jointly shall select two representative to negotiate with the municipality. Tex. Loc. Gov't Code §43.0562(b).

(c) Services for Special District after Annexation. If a municipality proposes to annex a special district as that term is defined by Texas Local Government Code §43.052, the municipality and the governing board of the district shall negotiate for provision of services to the area after annexation or for the provision of services to the area in lieu of annexation under Texas Local Government Code §43.0751. [Tex. Loc. Gov't Code §43.0562(a)(2)]

(d) Selection of Representatives for Special Districts. For purposes of negotiating with a special district, if more than one special district is located in the area proposed for annexation, the governing boards of the districts may jointly select five representatives to negotiate with a municipality on behalf of all the affected districts. Tex. Loc. Gov't Code §43.0562(c).

§19.24. Negotiation for Services in Lieu of Annexation.

(a) Provisions for Services without Annexation. The city council of a municipality with a population of less than 1.6 million may negotiate and enter into a written contract with representatives designated by the county commissioners, described above, for the provision of services and the funding of the services in the area. The agreement may also include an agreement related to permissible land uses and compliance with municipal ordinances. Tex. Loc. Gov't Code §43.0563(a). An agreement with this section is in lieu of annexation by the municipality of the area. Tex. Loc. Gov't Code §43.0563(b).

(b) Terms of Agreement. In negotiating an agreement under this section, the parties may agree to:

(1) any term allowed in a contract for the creation of an industrial district in the extraterritorial jurisdiction of a municipality under Texas Local Government Code §42.044 or under a contract with a special district under Texas Local Government Code §43.0751 regardless of whether the municipality or the area proposed for annexation would have been able to agree to the term under Texas Local Government Code §42.044 or §43.0751. Tex. Loc. Gov't Code §43.0563(c)(1);

(2) any other term to which both parties agree to satisfactorily resolve any dispute between the parties, including the creation of any type of special district otherwise allowed by state law. Tex. Loc. Gov't Code §43.0563(c)(2).

(c) Annexation Upon Petition. The fact that an area is or was once in a municipality's annexation plan does not prohibit the municipality from annexing the area upon request. A municipality may annex an area (for full or limited purposes), pursuant to a contract for services, at any time upon petition of the owner of the area if the area is in the municipality's annexation plan, or was removed from the annexation plan. Tex. Loc. Gov't Code §43.052(k).

§19.25. Arbitration Regarding Negotiations for Services.

(a) Provisions to Request Arbitration. If the municipality and the representatives of the area proposed for annexation cannot reach an agreement for the provision of services or an agreement for the provision of services in lieu of annexation either party, by majority decision of the party's representatives, may request the appointment of an arbitrator to resolve the service plan issues in dispute. The request must be made in writing to the other party before the 60th day after the date the service plan is completed. Tex. Loc. Gov't Code §43.0564(a). The municipality may not annex the area under another section of this chapter during the arbitration proceeding or an appeal from the arbitrator's decision. Tex. Loc. Gov't Code §43.0564.

(b) Appointment of an Arbitrator. The parties may agree on the appointment of an arbitrator. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the mayor of the municipality shall immediately request a list of 7 neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service or their successors in function. Tex. Loc. Gov't Code §43.0564(b). An arbitrator included in the list must be a resident of Texas and may not be a resident of a county in which any part of the municipality or any part of the district proposed for annexation is located. If the parties cannot agree on the appointment of an arbitrator before the 11th business day after the date the list is provided to the parties, each party or the party's designee may alternately strike a name from the list. The remaining person on the list shall be appointed as the arbitrator. Tex. Loc. Gov't Code §43.0564(b).

(c) Requirements for the Arbitrator. The arbitrator must:

- (1) set a hearing to be held not later than the 10th day after the date the arbitrator is appointed; and
- (2) notify the parties to the arbitration in writing of the time and place of the hearing not later than the 8th day before the date of the hearing. Tex. Loc. Gov't Code §43.0564(c).

(d) Limitation of Authority. The arbitrator may receive any documentary evidence or other information the arbitrator considers relevant, administer oaths, issue subpoenas, and require the attendance of witnesses in the production of documents. Tex. Loc. Gov't Code §43.0564(e). The authority of the arbitrator is limited to issuing a decision relating only to the service plan issues in dispute. Tex. Loc. Gov't Code §43.0564(d).

(e) Time Limit and Decision. Unless the parties to the dispute agree otherwise, the arbitrator shall complete the hearing within 2 consecutive days. The arbitrator shall permit each party 1 day to present evidence and other information. Tex. Loc. Gov't Code §43.0564(f). If good cause is shown, the arbitrator may schedule an additional hearing to be held not later than the 7th day after the date of the 1st hearing. Unless otherwise agreed to by the parties, the arbitrator must issue a decision in writing and deliver a copy of the decision to the parties not later than the 14th day after the date of the final hearing. Tex. Loc. Gov't Code §43.0564(f).

(f) Appeal Procedures. Either party may appeal any provision of an arbitrator's decision that exceeds the authority granted above to a district court in a county in which the area proposed for annexation is located. Tex. Loc. Gov't Code §43.0564(g).

(g) Time Span of Arbitrator's Decision. If the municipality does not agree with the terms of the arbitrator's decision, the municipality may not annex the area proposed for annexation before the 5th anniversary of the date of the arbitrator's decision. Tex. Loc. Gov't Code §43.0564(h).

(h) Payment for Arbitration. Unless the arbitrator finds that the request for arbitration submitted by the representatives of the area proposed for annexation was groundless or requested in bad faith or for the purposes of harassment, the municipality shall pay the cost of arbitration. If the arbitrator does make such a finding then the arbitrator may require the area proposed for annexation to pay all or part of the costs of arbitration. Tex. Loc. Gov't Code §43.0564(i).

§19.26. Checklist of Procedures for Annexation With and Without a Plan.

The following is a checklist that should be consulted before annexation. Some of the items may not be necessary. For example, several of the items apply to an annexation for which an annexation plan is required. If you are conducting an annexation for which an annexation plan is not required those items may be omitted. The 1st step in considering any annexation should be to prepare a schedule of action using this chapter and Texas Local Government Code Chapter 43 as guides.

(1) **Obtain legal description.** Decide what property the city council may be interested in annexing. Obtain an accurate legal description (metes and bounds) of all the areas to be included. Be sure the description "closes" i.e., describes a complete boundary with no gaps. **Be sure** you can identify the starting and ending points of the description on a map **and** the ground.

(A) Be sure that the area to be annexed is within the municipality's ETJ, or is already owned by the municipality. Tex. Loc. Gov't Code §43.051.

(B) Be sure that the area to be annexed is not within the ETJ of another municipality, unless written consent in the form of an ordinance or resolution has been received from the city council of the other municipality. Tex. Loc. Gov't Code §42.022(c) & §42.023.

(C) If the municipality has a population of less than 1.6 million, be sure that the area to be annexed is at least 1,000 feet wide at its narrowest point. This requirement applies whether or not the area is publicly or privately owned or whether or not it is a strip following the course of a road, highway, river, stream, or creek. The only exceptions are:

- 1) the boundaries of the municipality are already contiguous to the area on at least 2 sides. Tex. Loc. Gov't Code §43.054(b)(1);
- 2) the annexation is initiated by the written petition of the owners or a majority of the qualified voters in the area. Tex. Loc. Gov't Code §43.054(b)(2); or
- 3) the area abuts or is contiguous to another jurisdictional boundary. Tex. Loc. Gov't Code §43.054(b)(3).

The 3rd exception means that if there is a strip of land less than 1,000 feet wide between the boundary of one municipality (first municipality), and ETJ of another municipality, then the 1st municipality may annex that property.

(D) Avoid strip annexations. Check the annexation ordinance for the area of the municipality which is already within the municipal limits, which you are planning to use to meet the contiguous requirement for annexing the new property.

Texas Local Government Code §43.0545 sets out the following:

(a) A municipality may not annex an area that is located in its ETJ only because the area is contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point; or

(b) A municipality may not annex an area that is located in its ETJ only because the area is contiguous to municipal territory that:

(1) was annexed before September 1, 1999; and

(2) was in its ETJ at the time of annexation only because the territory was contiguous to municipal territory that was less than 1,000 feet in width at its narrowest point.

(c) Subsections (a) and (b) above do not apply to an area:

(1) completely surrounded by incorporated territory of 1 or more municipalities;

(2) for which the owners of the area have requested annexation by the municipality;

(3) that is owned by the municipality; or

(4) that is the subject of an industrial district contract under Texas Local Government Code §42.044.

(d) Additionally, Subsection (b) does not apply if the minimum width of the narrow territory described by Subsection (b)(2), following subsequent annexation, is no longer less than 1,000 feet in width at its narrowest point.

(e) For purposes of this section, roads, highways, rivers, lakes, or other bodies of water are not included in computing the 1,000-foot distance unless the area being annexed includes land in addition to a road, highway, river, lake, or other body of water.

(E) Be sure that the area to be annexed, plus the area of all property annexed since January 1 of the present calendar year (including areas annexed for limited purposes), is no more than 10 percent of the incorporated area of the municipality as of January 1 of the present year. Tex. Loc. Gov't Code §43.055. An area is not included in the 10 percent limit under Texas Local Government Code §43.055 if it is annexed at the request of a majority of the qualified voters of the area, or at the request of the owners of the area, or

is owned by the municipality, a county, the state, or the federal government, and is used for a public purpose. Tex. Loc. Gov't Code §43.055(a).

Tip. If the municipality has not annexed its entire 10 percent allocation in a preceding year, the municipality may carry over the unused allocation for use in subsequent years. Tex. Loc. Gov't Code §43.055(b). However, regardless of any carryover allocation, the municipality may not annex in any calendar year a total greater than 30 percent of the incorporated area of the municipality as of January 1 of that year. Tex. Loc. Gov't Code §43.055(c).

(G) If the proposed annexation would cause an area to be entirely surrounded by the municipality, but would not include the area within the municipality, the city council must find that surrounding the area is in the public interest. Tex. Loc. Gov't Code §43.057.

(H) If the area to be annexed is part of a water or sewer district, or a utility district, check Texas Local Government Code §43.071 and §43.072, and comply with the requirements set out in those sections. Be careful about this requirement because there are financial penalties involved if an annexation of a special district is invalidated by a court. In this section "water or sewer district" means a district created under Tex. Const. Art. 3, §52(b)(1) or (b)(2) or under Article 16, §59 that provides as its principal function water and/or sewer service to households. The term does not include a district the primary function of which is the wholesale distribution of water. Tex. Loc. Gov't Code §43.071(a).

(I) If the area is served by other public utilities, see the section on "Certificates of Convenience and Necessity" in this Manual to determine the effect of the annexation.

(2) **Evaluate Voting Rights Act Requirements.** Evaluate the racial makeup of the population in the area to be annexed in order to comply with the U.S. Voting Rights Act. Annexations must not be performed selectively in a manner that unreasonably excludes minority voters. It is conceivable that if an annexation would have the effect of diluting minority voting strength the annexation may not be approved by the U.S. Department of Justice. Even if preclearance has not been obtained the municipality may not prevent a resident of the new area from voting. Tex. Loc. Gov't Code §43.906(b).

***Caution:** Although municipalities are no longer required to submit proposed changes in municipal boundaries to the U.S. Department of Justice for preclearance under the federal Voting Rights Act, it remains unlawful to discriminate against minority voters.

(3) **Determine if an annexation plan is required.** (Annexation prior to December 31, 2002, will not be under a 3-year plan. But note that property included in the 3-year plan cannot be annexed earlier. Acts 1999, 76th Legislature, Chapter 1167 §17.) Texas Local Government Code §43.052(h) provides that an annexation plan will not be required if:

(1) the area contains fewer than 100 separate tracts of land on which 1 or more residential dwellings are located on each tract;

(2) the area will be annexed by petition of more than 50 percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or real property owners under one of the provisions for voluntary annexation by voting or petition. (See Tex. Loc. Gov't Code Chapter 43, Subchapter B.)

(3) the area is or was the subject of:

(A) an industrial district contract under Texas Local Government Code §42.044;

or

(B) a strategic partnership agreement under Texas Local Government Code §43.0751;

(4) *the area is located in a colonia, as that term is defined by Texas Government Code §2306.581;*

(5) *the area is annexed under:*

- Texas Local Government Code §43.026 – Type A municipality annexing area it owns;
- Texas Local Government Code §43.027 – General-law municipality annexing navigable stream;
- Texas Local Government Code §43.029 – Small municipality annexing unoccupied area on petition of school board; or
- Texas Local Government Code §43.031 – Change of boundaries by agreement of adjacent municipalities;

(6) *the area is located completely within the boundaries of a closed military installation; or*

(7) *the municipality determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from:*

(A) *imminent destruction of property or injury to persons; or*

(B) *a condition or use that constitutes a public or private nuisance as defined by background principles of nuisance and property law of this state.*

If the annexation is one for which an annexation plan is required, those requirements will apply **in addition to** the requirements set out on this checklist.

(4) **Prepare service plan.** If the annexation is one for which an annexation plan is required by Texas Local Government Code §43.052, a service plan must be prepared before the first day of the 10th month after the month in which Texas Local Government Code §43.053 requires the inventory to be prepared. Tex. Loc. Gov't Code §43.056(a). Typically, the service plan is prepared by the city engineer.

If the annexation is one for which an annexation plan was not required, the city council proposing the annexation shall direct its planning department or other appropriate municipal department to prepare a service plan before the publication of the notice of the first annexation hearing required under Texas Local Government Code §43.065.

In either case, the service plan must provide for extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality. Tex. Loc. Gov't Code §43.056(a) (for service plans under an annexation plan) and Tex. Loc. Gov't Code §43.065(a) (for service plans not under an annexation plan). “Full municipal services” means services provided by the annexing municipality within its full-purpose boundaries, including water and waste water services and excluding gas or electrical service. Tex. Loc. Gov't Code §43.056(c).

If the annexation is a voluntary annexation, performed at the request of the landowners, be sure each landowner approves the service plan in writing before the ordinance is filed. A copy of the service plan with an approval block signed by each owner to the ordinance, can be included with a copy of the petition for annexation. This may prevent later attempts to disannex because of lack of services.

(A) The service plan must schedule the provision of “full municipal services” in the annexed area no later than 2½ years after the effective date of the annexation unless certain services cannot reasonably be provided within that period and the municipality proposes a schedule providing those services. If the municipality proposes a schedule to extend the period for providing certain services, the

schedule must provide for the provision of full municipal services no later than 4½ years after the effective date of the annexation. Tex. Loc. Gov't Code §43.056(b).

(B) Regardless of whether the annexation is one for which an annexation plan was required or not, if the municipality provides any of the following services within the corporate boundaries of the municipality before annexation, Texas Local Government Code §43.056 requires that the service plan must include a program under which the municipality will provide those services in the area proposed for annexation on the effective day of the annexation of the area:

- 1) police protection;
- 2) fire protection;
- 3) emergency medical services
- 4) solid waste collection, except that before the 2nd anniversary of the date an area is included within the corporate boundaries of a municipality by annexation, the municipality may not prohibit the collection of solid waste in the area by a privately owned solid waste management service provider, or impose a fee for solid waste management services on a person who continues to use the services of a privately owned solid waste management service provider. Tex. Loc. Gov't Code §43.056(n). A municipality is not required to provide solid waste collection services to a person who continues to use the services of such a privately owned solid waste management service provider during that 2-year period. Tex. Loc. Gov't Code §43.056(o).

- 5) operation and maintenance of water and waste water facilities in the annexed area that are not within the service area of another water or waste water utility;

- 6) operation and maintenance of roads and streets, including road and street lighting;

- 7) operation and maintenance of parks, playgrounds, and swimming pools; and

- 8) operation and maintenance of any other publicly owned facility, building, or service.

(C) The service plan must also include a program under which the municipality will initiate after the effective date of the annexation the acquisition or construction of capital improvements necessary for providing municipal services adequate to serve the area. Tex. Loc. Gov't Code §43.056(e). The construction shall be substantially completed within the period provided in the service plan, which should be no later than 2½ years after the effective date of the annexation unless the extended schedule is proposed as discussed above. This service plan may amended to extend the period for construction if the construction is proceeding with all deliberate speed. Tex. Loc. Gov't Code §43.056(e).

The construction of the facilities shall be accomplished in a continuous process and shall be completed as soon as reasonably possible consistent with generally accepted local engineering and architectural standards and practices. The municipality does not violate this requirement if the construction process is interrupted for any reason by circumstances beyond the direct control of the municipality. The acquisition or construction of facilities shall be accomplished by purchase, lease, or other contract or by the municipality's succeeding to the powers, duties, assets, and obligations of a conservation and reclamation district as authorized or required by law. Tex. Loc. Gov't Code §43.056(e).

(D) The deadlines for substantially completing construction of capital improvements do not apply to a development project or proposed development project within an annexed area if the annexation of the area was initiated by petition or request of the owners of land in the annexed area and the municipality and the landowners have subsequently agreed in writing that the development project within that area, because of its size or projected manner of development by the developer, is not reasonably expected to be completed within that period. Tex. Loc. Gov't Code §43.056(e)

(E) If the annexed area had a lower level of services, infrastructure, and infrastructure maintenance than that provided within the corporate boundaries of the municipality before annexation, a service plan must provide the annexed area with a level of services, infrastructure, and infrastructure maintenance that is comparable to that available in other parts of the municipality with topography, land

use, and population density similar to those reasonably contemplated or projected in the area to be annexed. Tex. Loc. Gov't Code §43.056(g). However, if the annexed area had a level of services, infrastructure, and infrastructure maintenance equal to that provided within the corporate boundaries of the municipality before annexation, the service plan must maintain that same level. If the annexed area had a level of services for operating and maintaining the infrastructure, including the facilities described in paragraphs (B) 5) - 8) above, superior to the level of services provided within the corporate boundaries of the municipality before annexation, the service plan must provide for a level of services for operating and maintaining infrastructure of the area that is equal to or superior to that level of services. If the annexed area had a level of any other services superior to the level of services provided in the corporate boundaries of the municipality before annexation a service plan must provide the annexed area with a level of services that is comparable to the level of services available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected in the area to be annexed. Tex. Loc. Gov't Code §43.056(g).

(F) A service plan may not:

1) require the creation of another political subdivision, or require a landowner in the area to fund the necessary capital improvements in a manner inconsistent with the impact fee statute unless the landowner agrees to do so. Tex. Loc. Gov't Code §43.056(f); or

2) provide services in the area in a manner that would have the effect of reducing by more than a negligible amount the level of fire and police protection and emergency medical services provided within the corporate boundaries of the municipality before annexation. Tex. Loc. Gov't Code §43.056(f)(3).

(G) The statute does not require that a uniform level of services be provided to each area of the municipality if different characteristics of topography, land use, and population density are considered a sufficient basis for providing different levels of service. Tex. Loc. Gov't Code §43.056(g) & (m). However, this does not eliminate the requirement that the service plan provide a level of services in the annexed area that is equal or superior to the level of services provided within the corporate boundaries of the municipality before annexation. Tex. Loc. Gov't Code §43.056(m). Be very careful about providing different levels of services to different parts of the municipality. This may be an invitation to a claim of discrimination if the people living in the area with a lower level of services happen to be members of a protected class. Disputes regarding the level of services in a newly annexed area are resolved as set out in paragraph (J) below. Tex. Loc. Gov't Code §43.056(m).

(H) The proposed service plan must be made available for public inspection and explained at the hearings. The plan may be amended through negotiation but provision of any service may not be deleted. Tex. Loc. Gov't Code §43.056(j).

(I) On completion of the public hearings, and finalization of the plan, the service plan shall be attached to the ordinance annexing the area and approved as part of the ordinance. Tex. Loc. Gov't Code §43.056(j). Once the service plan is approved by the adoption of the annexation ordinance, the plan becomes a contractual obligation. It may be amended only after hearings and a finding that the plan is unworkable or obsolete, due to changed conditions or subsequent occurrences. The amended plan must conform to the changed conditions or subsequent occurrences and must provide for services that are comparable to, or better than, those established in the service plan before amendment. Before any amendment is adopted, the city council must provide an opportunity for interested persons to be heard at public hearings called and held in the same manner as the hearings for the original annexation. Tex. Loc. Gov't Code §43.056(k).

(J) A service plan is valid for 10 years. The municipality may choose to renew the service plan. A person residing in an annexed area in a municipality with a population of less than 1.6 million may enforce a service plan by applying to a court for a writ of mandamus not later than the 2nd anniversary of the date the person knew or should have known that the municipality was not complying with the service plan. If a writ of mandamus is applied for, the municipality has the burden of proving that the services have

been provided in accordance with the service plan in question. If a court issues a writ, the court may assess a civil penalty against the municipality to be paid to the state and may require the municipality to pay the person's cost and reasonable attorney's fees in bringing the action for the writ. It may also require the parties to participate in mediation. A writ issued under this subsection must provide the municipality with the option of disannexing the area within a reasonable period specified by the court. It may require the municipality to comply with the service plan in question before a reasonable date if the municipality does not disannex the area and may require the municipality to refund to the land owners of the annexed area money collected by the municipality for services to that area which were not provided. Tex. Loc. Gov't Code §43.056(l).

(5) Schedule two public hearings. Whether an annexation plan is required or not, the city council must schedule two public hearings. Passing a resolution which calls for the two public hearings, and sets the date, time, and place of each hearing, fulfills this requirement.

If the annexation is one for which an annexation plan is required, the hearings must be scheduled for dates not later than the 90th day after the date the inventory required by the plan is available for inspection. Tex. Loc. Gov't Code §43.0561(a). The hearings must be before the municipality institutes annexation proceedings.

If the annexation is one for which an annexation plan is not required, then the hearings must be scheduled for on or after the 40th day, but before the 20th day, before the date of the institution of the proceedings. Tex. Loc. Gov't Code §43.063(a).

This means that the hearings must be less than 19 days apart. Two to nine days is good because it will allow publication of only one notice as described in paragraph (f) below. A similar schedule can be used for annexations under an annexation plan.

Tip: "Institution of the proceedings" typically refers to the first day the annexation ordinance will be considered by the city council. *Red Bird Village v. State*, 385 S.W.2d 548 (Dallas 1965, writ ref'd). In some municipalities where ordinances are required to be voted on more than once (i.e., multiple readings), this will be the date of the 1st reading of the ordinance.

(6) Publish notice of hearings. Whether or not an annexation plan is required for the annexation, publish notice of each hearing in a newspaper of general circulation in the municipality at least once on or after the 20th day but before the 10th day before the date of the hearing. Tex. Loc. Gov't Code §43.0561(c); Tex. Loc. Gov't Code §43.063(c). If the hearings are 2 to 9 days apart, they can both be set out in one notice.

The notice for each hearing must also be posted on the municipality's internet website, if it has one, on or after the 20th day but before the 10th day before the date of the hearing and must remain posted until the date of the hearing. Tex. Loc. Gov't Code §43.0561(c) & §43.063(c).

Whether or not an annexation plan is required, the municipality must also give notice by certified mail to each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation. Tex. Loc. Gov't Code §43.0561(c)(2) & §43.063(c).

If the annexation is one for which an annexation plan is required, the municipality must also give notice by certified mail to each public entity and utility services providers that provide services in the area proposed for annexation. Tex. Loc. Gov't Code §43.0561(c)(1).

(7) Notify residents. If the annexation is one for which a plan is not required because it is in an area which contain fewer than 100 separate tracts of land on which one or more residential dwellings are

located (Tex. Loc. Gov't Code §43.052(h)(1)) then the municipality must give additional written notice of intent to annex. Tex. Loc. Gov't Code §43.062(b). The notice must be in writing and given before the 30th day before the date of the first annexation hearing required by Texas Local Government Code §43.063. The notice should be given to:

(A) each property owner in an area proposed for annexation as indicated by the appraisal records furnished by the appraisal district for each county in which the area is located;

(B) each public entity, as defined by Texas Local Government Code §43.053 or private entity that provides services in the area proposed for annexation; and

(C) each railroad company that services the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation. Tex. Loc. Gov't Code §43.062.

Tip: Postcards are often an effective and efficient means of providing notice by mail.

(8) **Hold public hearings.** Hold the public hearings on the advertised dates. If the annexation is one for which an annexation plan is required, one of the hearings must be held in the area proposed for annexation if a suitable site is reasonably available and more than 20 adults who are permanent residents of the area file a written protest of the annexation with the municipal clerk within 10 days after date of publication of the notice. Tex. Loc. Gov't Code §43.0561(b).

If the annexation is one for which an annexation plan is **not** required, one of the hearings must be held in the area proposed for annexation if a suitable site is reasonably available and more than 10 percent of the adults who are permanent residents of the area file a written protest to the annexation with the municipal clerk within 10 days after the date of publication of the notice. The protest must state the name, address, and age of each person who signs. Tex. Loc. Gov't Code §43.063(b).

A quorum of the city council must conduct the hearings. Tex. Loc. Gov't Code §43.0561 & §43.063. This means that in addition to other notices published, notice under the Open Meetings Act must be posted at least 72 hours in advance of each meeting. Wait until a quorum of the city council is present before opening the meeting and hearing from interested members of the public. Keep a record of the hearing. Someone who sues the municipality over an annexation may not recall, or admit to, an agreement with city council action at the hearing some months or years earlier.

The proposed service plan must be available for public inspection and explained to the inhabitants of the area at the public hearings. Tex. Loc. Gov't Code §43.056(j); Tex. Loc. Gov't Code §43.065(b). The plan may be amended through negotiation at the hearings but the provision of any service may not be deleted. On completion of the public hearings, the service plan shall be attached to the ordinance annexing the area to be approved as part of the ordinance. Tex. Loc. Gov't Code §43.056(j).

(9) **Meet to pass or reject annexation.** The city council then meets to pass or reject the annexation. In the case of an annexation for which an annexation plan is required, the actual meeting at which the annexation is passed or rejected may occur a year or 2 after the hearings held after the inventory is available for inspection. Tex. Loc. Gov't Code §43.0561 and §43.053.

If an annexation plan is not required for the annexation, then the meeting must be not more than 40 days nor less than 21 days **after** the public hearings. Tex. Loc. Gov't Code §43.063(a).

In either case, if the meeting is a regular city council meeting, put it on the agenda and on the notice which is posted for the meeting. If the meeting is not a regular city council meeting, call a special meeting, and post notice for the meeting. The city council must pass the annexation ordinance and approve the service plan. (The service plan is attached to the annexation ordinance). If the ordinance passes, publish it (or a caption) in the official newspaper. Tex. Loc. Gov't Code §52.011-§52.013.

Note that the annexation of an area for which an annexation plan is not required must be completed within 90 days after the date the city council institutes the annexation proceedings or those proceedings are void. Tex. Loc. Gov't Code §43.064(a). This means that once the annexation ordinance is first presented to the city council for consideration, which in some municipalities may be the date of the 1st reading, the city council has 90 days to complete the annexation. Therefore, avoid considering the annexation ordinance before preparing the service plan and conducting the necessary hearings. Any period during which the municipality is restrained or enjoined by a court from annexing the area is not included in computing the 90-day period. Tex. Loc. Gov't Code §43.064(a).

(10) **Revise service plan for partial annexation.** The city council can vote to annex only part of the area proposed for annexation. If this occurs, the city council shall direct that a revised service plan be prepared for that part. Tex. Loc. Gov't Code §43.056(i).

(11) **Submit ordinance to Department of Justice.** After the annexation ordinance passes and the service plan is approved, the boundary change must be submitted to the United States Department of Justice for clearance.

(12) **File ordinance with county clerk.** Within 30 days after obtaining preclearance for the annexation or disannexation under the Federal Voting Rights Act, the municipality must file with the county clerk a certified copy of the annexation or disannexation ordinance. This should contain the legal description of the property involved. Tex. Loc. Gov't Code §41.0015.

(13) **Notify Secretary of State and Comptroller.** Send a certified copy of the ordinance to the Secretary of State of Texas. Send by certified or registered mail a copy of the ordinance with a map of the whole municipality clearly showing the new annexation to the Sales Tax Division of the State Comptroller's office. Tax Code §321.102.

(14) **Amend the official city map.** Prepare an amended official city map and have it adopted by ordinance. File a copy of the amended map in the office of the municipal clerk and keep a copy in the office of the city engineer if there is one. File a copy of the field notes and ordinance in the county deed records. (The county clerk may not accept large maps for filing but should file a certified copy of the ordinance with attached field notes.)

§19.27. Voluntary Annexations.

With certain exceptions, general-law municipalities may only annex territory voluntarily. The power of voluntary annexation depends on the type of municipality and the type of property to be annexed. Some municipalities may be able to take advantage of more than one annexation statute.

(1) **Municipalities Over 5,000 Population.** General-law municipalities with a population of more than 5,000 may annex property which is contiguous to the municipality and that is not more than one mile in width. The city council may call an election upon the receipt of a petition signed by 100, or more, or by a majority of the qualified voters of the area which describe the area by metes and bounds and is accompanied by a plat of the area. The petition is filed with the municipal clerk. Details of the conduct of the election and the effect of the election are set out in Texas Local Government Code §43.023.

(2) **Voluntary Annexations for Type A Municipalities.**

(A) **Voters.** Type A general-law municipalities may annex contiguous property up to ½ mile in width if a majority of the qualified voters of the area vote to become part of the municipality. Any 3 of these voters may prepare an affidavit to the fact of the vote and file the affidavit with the mayor, who certifies it to the city council. The city council may annex the property by ordinance. Details are set out in Texas Local Government Code §43.024. (See Appendix A, Form 1 - "Annexation Petition" and Form 2 - "Affidavit" for use in this type of annexation). Each voter's tract must abut the present municipal limits, which may result in successive annexations.

(B) **Municipally-owned property.** Type A general-law municipalities may annex property the municipality owns, by ordinance. The ordinance must describe the property by metes and bounds and be entered in the minutes of the city council. Tex. Loc. Gov't Code §43.026.

(C) **Island annexations.**

1) Under certain conditions, a Type A, General-Law municipality, with a population of 1,500 - 1,599 may annex an area upon petition by the owners even if the area to be annexed does not touch the current city limits. Tex. Loc. Gov't Code §43.032. The area must:

- a) be adjacent to the municipality; and
- b) not be served with water or sewer service from the municipality;

2) A petition must:

- a) describe the area to be annexed by metes and bounds;
- b) be signed by each owner of real property in the area to be annexed; and
- c) be filed with the municipal clerk.

3) Before the annexation, the petitioners and the municipality may enter into a development agreement.

(3) **Quasi-Voluntary Annexations for Type B Municipalities.** Type B general-law municipalities may annex property contiguous to its boundaries, if a majority of the qualified voters in the area votes to become part of the municipality. Any three of the voters may prepare an affidavit and file it with the mayor. The mayor shall certify the affidavit to the city council, which may annex the area by ordinance. Texas Local Government Code §43.025 details this form of annexation. (See Appendix A, Form 1 - "Annexation Petition" and Form 2 - "Affidavit" for use in this type of annexation). There are limits on the ability of a Type B municipality to exceed the area requirements of Texas Local Government Code §5.901. See Tex. Loc. Gov't Code §43.025(d). Although each voter's tract is separate, the annexed area is to be viewed as a whole (and not piecemeal). *Village of Salado v. Lone Star Storage Trailers, II Ltd*, 2009 WL 961570 (April 10, 2009).

Tip: The statutory authority to annex granted by Texas Local Government Code §43.025 (above) allows a majority of qualified voters of an "area" to seek annexation by the municipality of the entire "area" regardless of whether the objections of property owners. With this tool, municipalities can annex large or small tracts, vacant or occupied, without the property owner's consent if the municipality has the support of a majority of registered voters in the "area" defined by the voters submitting the petition for annexation.

(4) **Sparsely Populated Areas.** All municipalities may annex a contiguous area up to ½ mile in width which is vacant or on which fewer than three qualified voters reside if the owners of the property petition the city council. The petition must be in writing, describe the area by metes and bounds, and be signed before a notary by each person having an interest in the area. Tex. Loc. Gov't Code §43.028.

After the 5th day, but before the 30th day after the petition is filed, the city council shall hear the petition and arguments for and against the petition. The city council may annex the area by ordinance. Certified copies of the ordinance and a copy of the petition shall be filed with the county clerk. The procedure is detailed in Texas Local Government Code §43.028. (See Appendix A, Form 3 - "Petition For Voluntary Annexation.")

§19.28. Involuntary Annexations in Certain Municipalities.

(a) Involuntary Annexation by Home-Rule Municipality. A home-rule municipality has the power of involuntary annexation and may extend its boundaries and annex areas adjacent to the municipality, without the consent of the landowner, so long as the municipality complies with the requirements of its charter and the procedural rules set out in Texas Local Government Code described in this chapter. Tex. Loc. Gov't Code §43.021. A home-rule municipality may also exchange areas with other municipalities. Tex. Loc. Gov't Code §43.021(3).

If the charter of a home-rule municipality requires an election on the issue of annexation then the city council must order an election not only for the residents of the municipality, but also for the qualified voters of the area to be annexed. The election must be held in a convenient location in the municipality at the same time as the election for voters residing in the municipality. Tex. Loc. Gov't Code §43.022. The election order will provide for separate elections for the voters of the municipality and for the voters of the area. If the question is not approved by a majority of the qualified voters of the municipality and a majority of the qualified voters of the area to be annexed, then the area may not be annexed. Tex. Loc. Gov't Code §43.022(e).

(b) Involuntary Annexation by Municipality with More than 1,000 Population. A general-law municipality with a population of 1,000 or more, which is not eligible to adopt a home-rule charter, may involuntarily annex an area if:

- (1) the municipality is providing the area with water or sewer services;
- (2) the area does not include unoccupied territory in excess of one acre for each service address for water and sewer service;
- (3) the service plan requires that police and fire protection, at a level consistent with protection provided within the municipality, must be provided within 10 days after the effective date of the annexation;
- (4) the municipality and the affected landowners have not entered an agreement to not annex the area for a certain time period; and
- (5) the procedural rules of Texas Local Government Code Chapter 43 are satisfied. Tex. Loc. Gov't Code §43.033

(c) Disannexation. After one year, but before three years from the passage of an ordinance annexing an area under this section, a majority of the landowners or registered voters in the area may vote by petition for disannexation submitted to the municipality. In such case, the municipality must immediately disannex the area, and may also immediately discontinue providing water and sewer service to the area. This provision for disannexation could affect bonds issued while the area was part of the municipality. If the municipality anticipates issuing bonds, competent bond counsel should be consulted before a general-law municipality undertakes this type of annexation.

(d) Reservoirs. General-law municipalities may annex the following areas, with or without the consent of the owners or residents:

- (1) a reservoir owned by the municipality and used to supply water to the municipality, and any land contiguous to the reservoir which is subject to an easement in favor of the municipality for flood control purposes (the total area may not exceed 600 acres); and
- (2) the right of way of any public road or highway connecting the reservoir to the municipality by the most direct route. Tex. Loc. Gov't Code §43.101.

None of the area can be more than five miles from the municipality's boundaries, and none of the area can be in another municipality's ETJ. Tex. Loc. Gov't Code §43.101.

Note that property may be annexed under this provision even if part is outside the municipality's ETJ, or is narrower than the 1,000 foot requirement. The 10 percent per year limitation of Texas Local Government Code §43.055 does not apply to these annexations.

(e) Airports. Any municipality may annex (with or without the consent of owners or residents) an airport owned by the municipality, and the right of way at any public road connecting the airport to the municipality by the most direct route, if:

- (1) none of the area is more than eight miles from the municipality's boundaries; and
- (2) each other municipality in whose ETJ the airport is located agrees. Tex. Loc. Gov't Code §43.102.

The area may be annexed even though it is outside of the municipality's ETJ, or is less than the 1000 foot requirement. The 10 percent per year limitation of Texas Local Government Code §43.055 does not apply to these annexations. This type of annexation does not expand the municipality's ETJ.

(f) Navigable Streams. Special law municipalities located on or along a navigable stream may annex up to 2,500 feet on either side of the stream in order to improve navigation on the stream, and to establish and maintain wharves, docks, railway terminals, or other facilities relating to navigation or wharves. Tex. Loc. Gov't Code §43.136. A stream is navigable as a matter of law if it retains an average width of 30 feet from the mouth up. Tex. Nat. Res. Code §21.001. A stream is navigable in fact when it is used or is susceptible of being used in its natural and ordinary condition as a highway for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water. *Taylor Fishing Club v. Hammett*, 88 S.W.2d, 127, 129 (Austin 1935, writ dismissed).

A special law municipality may not tax the property annexed under this section, unless the property is within the general municipal boundaries.

(g) Streets. All general-law municipalities with populations of over 500 may involuntarily annex by ordinance a street, highway, alley, or other public or private right-of-way including a railway line, spur or roadbed that is adjacent and runs parallel to the boundaries of the municipality. The 1,000 foot width requirements of Texas Local Government Code §43.054 does not apply. Tex. Loc. Gov't Code §43.103.

§19.29. Payment for Annexation of Property in a Special District.

A municipality may not annex an area in a water or sewer district unless it annexes the entire part of the district that is outside the municipality's boundaries. (Water or sewer district means a district or authority that provides or proposes to provide as its principal function water services or sewer services or both to household users, but does not include a district or authority the primary function of which is wholesale distribution of water.) Tex. Loc. Gov't Code §43.071. This restriction does not apply if the district is wholly or partly in the extraterritorial jurisdiction of more than one municipality.

(1) A general-law municipality incorporated after 1983, which, after the incorporation of a water or sewer district, is incorporated over all or any part of the district, may annex the entire part of the water or sewer district outside the municipality's boundaries, without the consent of the inhabitants or property owners of the territory. Tex. Loc. Gov't Code §43.071(f).

(2) If a municipality with a population of less than 1.5 million annexes a special district for full or limited purposes, and the annexation precludes or impairs the ability of the district to issue bonds, the municipality shall, prior to the effective date of the annexation, pay in cash to the land owner or developer of the district a sum equal to all actual costs and expenses incurred by the land owner or developer in connection with the district that the district has, in writing, agreed to pay and they would otherwise have

been eligible for reimbursement from bond proceeds under the rules and requirements of the Texas Commission on Environmental Quality, or a successor agency, which exist on the date of annexation. Tex. Loc. Gov't Code §43.0715.

§19.30. Annexation of Emergency Services District.

If a municipality annexes a portion of an emergency services district, it may request the district to disannex that area. Tex. Health and Safety Code §775.022(a). The municipality shall compensate the district in an amount equal to the annexed territory's pro-rata share of the district's indebtedness at the time the territory is annexed. If the district requests, the municipality shall purchase from the district, at fair market value, any real or personal property used to provide emergency services in the territory annexed by the municipality and disannexed by the district. Tex. Health & Safety Code §775.022.

§19.31. Partnership with District Annexed by Municipality.

In 1995, the Legislature passed Texas Local Government Code §43.0751 to permit a "strategic partnership agreement" between a municipality and a district which has been annexed for limited or full purposes. This provision of the Code is quite lengthy and should be examined carefully if such circumstances apply to your municipality.

§19.32. Limited Purpose Annexations – Home-Rule Municipalities.

(a) Limited Purpose Annexations by Certain Home-Rule Municipalities. A home-rule municipality with more than 225,000 inhabitants, which has the power to annex under its home-rule charter, may annex an area for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area. Tex. Loc. Gov't Code §43.121. An area annexed for limited purposes under these circumstances must be:

- (1) within the municipality's extraterritorial jurisdiction; and
- (2) contiguous to the corporate boundaries of the municipality, unless the owner of the area consents to non-contiguous annexation.

(b) Exclusions for Limited Purpose Annexations. A limited purpose annexation may not include any strip of land, including a strip following the course of a road, highway, river, stream, or creek, that is, at its narrowest point, less than 1,000 feet in width and is located further than 3 miles from the pre-existing boundaries of the municipality. Tex. Loc. Gov't Code §43.122.

Tip: If your municipality has more than 225,000 inhabitants and has an interest in such a limited purpose annexation, carefully review Texas Local Government Code, Chapter 43, Subchapter F for requirements of hearing and deadlines for completion of annexation.

§19.33. Annexation Statutes Applicable to Certain Municipalities.

Although many of the statutes in this section were enacted by the legislature with the intent to apply to a specific municipality, these may unintentionally apply to other municipalities.

- (1) Texas Local Government Code §43.029 applies to a municipality with a population of 900 to 920; 1,251 to 1,259; or 3,944 to 3,964. Such a municipality may annex an area which is contiguous to the annexing municipality and vacant without residents upon the petition of the board of trustees of a public school occupying the area.

(2) Texas Local Government Code §43.034 allows a municipality with a population between 1,000-1,300, part of whose boundary is part of a shoreline of a lake located entirely within Texas with 75,000 or more surface acres, to annex adjacent territory involuntarily.

(3) Texas Local Government Code §43.073 applies to municipalities with a population of more than 500,000 (425,000 before the 1991 Legislative Session) that annexes all or part of a levee improvement district.

(4) Texas Local Government Code §43.074 allows abolition of water related special districts created wholly from territory located in a municipality.

(5) Texas Local Government Code §43.075 covers abolition of, and division of, functions when a municipality annexes all or part of an area of a water related special district which is not partially located in any other municipality.

(6) Texas Local Government Code §43.076 allows abolition of water related special districts not created by special act of the Legislature if a municipality annexes part of such district and the district is also located in one or more other municipalities.

(7) Texas Local Government Code §§43.077-43.080 provides for abolition of conservation and reclamation districts located in more than one municipality but which were not located in more than one municipality prior to April 1, 1971.

(8) Texas Local Government Code §43.105(a) allows a general-law municipality with a population of 1,096-1,100 which is located in a county with a population of 85,000 or more or that has a population of 5,240-5,280 to annex a public street, highway, road, or alley adjacent to the municipality.

Article 4. Disannexation

§19.34. Failure to Provide Services.

If a municipality does not provide, or cause to be provided, the services set out in its services plan within the statutory time limits, a majority of the qualified voters may file petition for disannexation. Tex. Loc. Gov't Code §43.141. The requirements for this petition are very strict, and the petition should be examined with care to be sure that it meets the following requirements of Texas Local Government Code §43.141(d). The petition must:

- (1) request disannexation in writing;
- (2) be signed in ink or indelible pencil by the appropriate voters (the signatures do not have to be on one paper);
- (3) be signed by each voter as that person's name appears on the most recent official list of registered voters;
- (4) contain a note made by each voter stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate;
- (5) describe the area to be disannexed and have a plat or drawing of the area attached; and
- (6) be presented to the municipal clerk.

Before the petition is circulated, notice must be given by posting a copy of the petition, for 10 days, in three public places in the annexed area, and by publishing a copy of the petition once in a newspaper at least 16 days before the petition is circulated.

If the city council fails to disannex the property within 60 days after receipt of the petition, any one or more of the signers of the petition may bring a suit in district court to request disannexation. Tex. Loc. Gov't Code §43.141(b).

§19.35. Disannexation by Petition and Election.

Fifty or more qualified voters of an area of a general-law municipality may sign and present a petition for disannexation. The mayor shall order an election of the very next uniform election date set out in Chapter 41 of the Texas Election Code that allows enough time to hold the election in accordance with the Texas Election Code. The withdrawal may not result in the municipality having an area less than one square mile or one mile in diameter around the center of the original boundaries. If an area withdraws, it is liable for its pro rata share of all bonded indebtedness. The municipality shall continue to levy property taxes on the area at the same rate as for the rest of the municipality, until the taxes collected equal the area's pro rata share of indebtedness. Tex. Loc. Gov't Code §43.143.

§19.36. Disannexation of Sparsely Populated Areas.

The city council of a municipality, by passing an ordinance, may disannex areas of at least 10 contiguous acres if the property is uninhabited or contains fewer than one occupied residence or business structure for every two acres, and less than three occupied residences or business structures on any one acre. Tex. Loc. Gov't Code §43.144.

(1) The city council of a municipality with a population of 4,000 or more located in a county with a population of 205,001 or more may discontinue an area of 3 or more contiguous acres adjoining the municipal boundaries that are unimproved. Tex. Loc. Gov't Code §43.145(a)(1).

(2) The city council of a municipality with a population of 596,000 or more may disannex an improved area contiguous to the municipal boundary which is not taxable by the municipality. Tex. Loc. Gov't Code §43.145(a)(2).

☛***Caution:** In each of the above cases the city council must pass an ordinance. The mayor then enters an order discontinuing the area in the minutes or records of the municipality on the date of the entry of the order.

§19.37. Disannexation of Road or Highway.

A municipality disannexing a road or highway shall also disannex a strip of land that is equal in size to the minimum area that the municipality is required to annex in order to comply with the width requirements of Texas Local Government Code §43.054, unless the disannexation is undertaken with the mutual agreement of the county government and the municipality. Tex. Loc. Gov't Code §43.147. This means that in most cases, a municipality may not disannex a road or highway without the total disannexation being at least 1,000 feet wide plus the width of the road, at its narrowest point. See Texas Local Government Code §43.054 for possible exceptions when the boundaries of the municipality are contiguous to the area on at least two sides or the area abuts or is contiguous to another jurisdictional boundary. The strip of area to be annexed must be adjacent to either side of the road or highway and follow the course of the road or highway. Tex. Loc. Gov't Code §43.147(b).

§19.38. Disannexation of Limited Purpose Annexation in a MUD.

A municipality may disannex land in a municipal utility district (MUD) if that land had been annexed for limited purposes on or after September 1, 1989. Tex. Loc. Gov't Code §43.146.

§19.39. Refund of Taxes After Disannexation.

If an area which was not included in the annexation plan between December 31, 1999, and December 31, 2002, is annexed, and the first public hearing was held, or the first hearing notice was published, on or after

September 31, 1999, then upon disannexation the municipality must refund property fees and taxes collected less amounts spent directly on the area. Tex. Loc. Gov't Code §43.148.