



TEXAS MUNICIPAL LEAGUE

Empowering Texas cities to serve their citizens

President **Martha Castex-Tatum**, Vice Mayor Pro Tem, Houston
Executive Director **Bennett Sandlin**

September 13, 2022

The Honorable Paul Bettencourt
Chairman, Local Government Committee
Texas State Senate
PO Box 12068
Austin, Texas 78711-2068

Re: Texas Municipal League Comments on Senate Local Government Interim Charges:
Study issues related to municipal extraterritorial jurisdictions and annexation powers, including examining possible disannexation authority. Determine whether extraterritorial jurisdictions continue to provide value to their residents and make recommendations on equitable methods for disannexation.

Dear Chairman Bettencourt:

The Texas Municipal League (TML) is a non-profit association of 1,173 incorporated cities. TML provides legislative, legal, and educational services to its members. Thank you for the opportunity to provide written comments on the above-mentioned interim charges relating to the extraterritorial jurisdiction.

In Texas, the extraterritorial jurisdiction (ETJ) is an “unincorporated area that is contiguous to the corporate boundaries” of a city. TEX. LOC. GOV’T CODE § 42.021. In addition to regulating annexation authority and procedures, the Municipal Annexation Act created the concept of ETJ in 1963. The policy purpose underlying the concept of the ETJ is described in Section 42.001 of the Texas Local Government Code:

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

The geographical extent of any city’s ETJ is contingent upon the number of inhabitants of the city, ranging from half a mile (fewer than 5,000 inhabitants) to five miles (100,000 or more inhabitants). An area to be annexed must be located within the city’s ETJ under state law.

Under current law, cities have limited but important authority to enforce city regulations and engage in economic development efforts in the ETJ. The following are examples of state laws that authorize cities to regulate in the ETJ:

- Health & Safety Code § 713.009 – Cemeteries
- Local Government Code Chapter 43 – Annexation
- Local Government Code § 212.003(a) – Certain Subdivision and Platting Regulations
- Local Government Code §§ 216.003, 216.902 – Billboards/Signs
- Local Government Code § 217.042 – Nuisances Within 5,000 Feet (Home Rule City Only)
- Local Government Code § 341.903 – Policing City-Owned Property (Home Rule City Only)
- Local Government Code § 380.001 – Economic Development Programs
- Local Government Code § 552.001 – Utility System
- Water Code § 26.177 – Pollution Control and Abatement

State law prohibits a city from regulating the following in the ETJ: (1) the use of a building or property for business, industrial, residential, or other purposes; (2) the bulk, height, or number of buildings constructed on a tract of land; (3) the size of a building that can be constructed on a tract of land; (4) the number of residential units that can be built per acre of land; and (5) the size, type, or method of construction of a water or wastewater facility that can be constructed to serve a developed tract in certain circumstances. TEX. LOC. GOV'T CODE § 212.003(a).

The Texas Supreme Court held that general law cities may not extend their building codes into the ETJ. *See Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527 (Tex. 2016). And the Dallas Court of Appeals held that a home rule city “lacks authority to require a landowner developing property in its [extraterritorial jurisdiction] to obtain City building permits, inspections and approvals, and pay related fees.” *Collin Cty. v. City of McKinney*, 553 S.W.3d 79 (Tex. App.— Dallas 2018).

Some believe that the only policy justification for city regulation in the ETJ was the fact that the property being regulated would one day become part of the city through annexation. Because the future inclusion of the territory in the city limits is less of a certainty than it was four years ago due to annexation reforms, the same individuals and interest groups argue that cities should no longer be able to extend enforcement of any regulation into the ETJ.

There are, of course, many reasons why it makes sense for cities to retain their limited regulatory authority in the ETJ. For one, annexation can still take place with property owner consent. If the Texas Legislature were to restrict city authority in the ETJ, it further opens the door to development and services that are inconsistent with those in the nearby city limits. Extending that scenario out to its conclusion, if a future property owner wished to be annexed into the city in order to benefit from public safety, utility, or other services provided by the city, a city may object to inclusion exactly because the property was developed in a way that is incompatible with the services the city is able to provide.

Additionally, after nearly six decades of annexation in many cities, the ETJ isn't just rural land located miles away from the city center. In many cases now, there are areas located in the ETJ that are all but surrounded by the city limits, and distinguishing between what is and isn't in the ETJ is a task that can only truly be accomplished by a land surveyor. In many communities, there are subdivisions a stone's throw from one another, one located in the city limits, and one immediately outside the city limits in the ETJ.

ETJ development in such close proximity to city residents underscores the importance of state legislature's policy justification for the ETJ mentioned above. The legislature has deemed the concept of ETJ important in protecting the health, safety, and welfare of *both* city residents and those residing in close proximity to cities. In many cases, cities provide vital services to ETJ residents precisely because of their proximity to the city.

In 2021, you authored S.B. 1992, which would have undermined the efficacy of ETJ in many areas. S.B. 1992 would have required the release of property from the ETJ: (1) if a city received a valid petition from residents in the ETJ asking for it, if the area had a population of less than 200; or (2) pursuant to an election in an area with a population of 200 or more. The end result would have been a lack of any oversight of certain activities just outside the city limits, including those that impact things like water quality and drainage, that would directly affect city residents and ETJ residents alike. Legislation like S.B. 1992 would thwart regional planning efforts by establishing an inconsistent and ever-changing regulatory environment in some of the fastest growing areas in the country. As a result, we ask that this committee continue to disfavor bills like S.B. 1992.

The question of a city's ability to impose regulations in the ETJ is not a new one. In fact, the legal authority for a city to impose extraterritorial regulations without granting residents of the unincorporated (but regulated) area to vote in municipal elections was directly addressed by the Supreme Court of the United States over 40 years ago in *Holt Civic Club v. City of Tuscaloosa*. There, the Court upheld the city regulatory authority in the extraterritorial area as a rational legislative response to problems faced by cities and held that residents of the unincorporated community did not have a constitutional right to participate in political processes solely because of their subjection to city jurisdiction. In writing for the majority, Chief Justice Rehnquist succinctly frames the policy rationale for ETJ authority in a way that is just as relevant today as it was in 1978:

“The [state legislature] could have decided that municipal corporations should have some measure of control over activities carried on just beyond their “city limit” signs, particularly since today’s police jurisdiction may be tomorrow’s annexation to the city proper. Nor need the city’s interests have been the only concern of the legislature when it enacted the police jurisdiction statutes. Urbanization of any area brings with it a number of individuals who long both for the quiet of suburban or country living and for the career opportunities offered by the city’s working environment. Unincorporated communities...dot the rim of most major population centers...and state legislatures have a legitimate interest in seeing that this substantial segment of the population does not go without basic municipal services such as police, fire, and health protection. Established cities are experienced in the delivery of such services, and the incremental cost of extending the city’s responsibility in these areas to surrounding environs may be substantially less than the expense of establishing wholly new service organizations in each community.”

Holt Civic Club v. City of Tuscaloosa, 439 U.S. 60, 74 (1978)

Given the dramatic growth in Texas over the last several years, Texas cities continue to have a responsibility in helping shape regional development. The retention of city ETJ authority is critical to ensure a high quality of life for Texas families in and around the city limits.

TML respectfully requests that your office consider these comments when issuing your interim report.

Please contact me if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Monty Wynn". The signature is stylized and cursive, with a large "M" and "W".

Monty Wynn
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