ANNEXATION
PROCEDURES AND PITFALLS

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Introduction

The authority of municipalities in Texas to annex territory into their corporate boundaries is essential to their growth, vitality, and economic well-being. Annexation of adjacent territory is often necessary to ensure that development of such territory meets minimal standards designed to protect property values and the health, safety, and general welfare of the inhabitants of both the territory and the municipality. Annexation of territory may also be necessary to ensure that the territory and its inhabitants are provided adequate levels of services and facilities; such as police, fire, and emergency medical services, solid waste collection, water and wastewater, parks and recreation, and streets and roadways.

Cities in Texas, particularly home rule cities, have enjoyed relatively broad powers of annexation. The power to unilaterally annex territory has been acknowledged as one of the primary reasons why cities in Texas have flourished, particularly in the metropolitan areas, while cities in other parts of the nation with limited annexation authority, have declined. Texas home rule cities were able to annex an area to ensure that proposed development met land use, construction, and other health and safety standards adopted by the city, or to incorporate existing development into the community for growth, increase in tax base, and/or provision of municipal services. More often than not, these annexations were undertaken, not as a result of long-range plans but, instead, undertaken expeditiously to annex growth or to address potentially inconsistent, inadequate, or uncertain development.

Prior to adoption of the Municipal Annexation Act in 1963, a home rule city had broad authority to unilaterally annex territory, as long as the territory annexed was adjacent to its corporate limits and such annexation was conducted in accordance with the rules provided by its city charter. A general law city's authority to annex was limited to the annexation of adjacent territory upon the request of a majority of the qualified voters residing within the territory or upon petition of all of the landowners of the territory, if it was uninhabited or if fewer than three qualified voters resided within the territory.

After World War II, cities progressively experienced significant increases in population and growth. As a result, there were examples of abuse of the unilateral annexation authority enjoyed by home rule cities. Cities, and others, recognized that certain reasonable limitations on their annexation authority should be imposed. As a result, and under the sponsorship of the Texas Municipal League, the Municipal Annexation Act was adopted in 1963. Although this Act imposed certain restrictions on the authority of cities to annex, it also provided for orderly growth, without unduly restricting the cities' ability to expand. The authority of cities to annex territory into their corporate limits, and the procedural rules related thereto, remained virtually unchanged for twenty-five years.

Although changes to the annexation laws have been adopted in recent years, the most significant and complex changes impacting the annexation authority of cities was adopted in 1999 by Senate Bill (SB) 89. These revisions to the annexation laws have made unilateral annexations more complicated, and have resulted in a significant limitation of a city's authority to annex territory into its corporate limits. The primary purpose of this paper is to provide a general outline and explain the current laws of Texas relating to the authority and procedures by which municipalities may expand their boundaries through annexation.

I.

General Authority for Full-Purpose Annexation

Municipalities in Texas can be generally divided into two categories of cities, general law and home rule. General law cities look to the Legislature for their grant of authority; therefore, general law cities' authority to annex territory into their corporate boundaries must be found in the laws of the State. These laws are found in Chapters 42 and 43 of the Texas Local Government Code. On the other hand, home rule cities derive authority under their home rule charter adopted by special act of the Texas Legislature, or under authority of Article XI, Section 5 of the Texas Constitution (the "Home Rule Amendment"). Cities operating under a home rule charter have the full power of self-government, which is limited only by the Constitution and general laws of the United States and this State, and their charter. Such limitations must be express or clearly implied. For a home rule city, it is necessary to look at acts of the Legislature, not for grants of power to such cities, but only for limitations on their powers. Nonetheless, the Legislature has, as to annexation, retained the authority to prescribe limitations on how cities exercise their annexation powers.

A municipality may only annex area within its extraterritorial jurisdiction[1] (ETJ) and such area must be adjacent[2] to its corporate boundaries.[3]

A. Home Rule Cities. Most home rule cities have the authority under their charter and Chapter 43 of the Texas Local Government Code to unilaterally annex territory into their corporate limits. However, such authority and procedures applicable to annexation may vary from one charter to another charter. Whatever authority or procedure is prescribed by a particular charter, it must be strictly followed, except where it conflicts with State law, in which case State law governs. Section 43.021[4] provides the general authority of a home rule municipality to annex area and take other actions regarding boundaries:

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[1] See Chapter 42 of the Texas Local Government Code for provisions prescribing the establishment and extent of a municipality's ETJ.

[2] "Adjacent" means "contiguous and adjacent"; *City of Waco v. City of McGregor*, 523 S.W.2d 649 (Tex. 1975); *City of West Lake Hills v. State ex rel. City of Austin,* 466 S.W.2d 722 (Tex. 1971);).

[3] There are a few exceptions where the annexation of territory outside of a city's ETJ is authorized: Section 43.051 - land owned by the city; Section 43.071 – water or sewer district; Section 43.101 – reservoir owned by city; and Section 43.102 – airport owned by city.

[4] All section references are to the Texas Local Government Code Ann. (Vernon 1999 and Supp. 2004), unless otherwise indicated.

"A home rule municipality may take the following actions according to rules as may be provided by the charter of the municipality and not inconsistent with the procedural rules prescribed by this chapter:

(1) fix the boundaries of the municipality;

(2) extend the boundaries of the municipality and annex area adjacent to the municipality; and

(3) exchange area with other municipalities."

B. General Law Cities. Since general law cities look to the Legislature for grants of power, Chapter 43 of the Local Government Code must be reviewed to determine what authority these types of cities have to annex territory into their corporate limits. Most annexations by general law cities are made under the authority of Section 43.024,[5] upon the request of area voters, or Section 43.028, upon petition of area landowners.

Section 43.024 (Request of Area Voters) applies only to annexation of an area that is one-half mile or less in width, and is contiguous to the city's corporate limits. Annexation of such area is authorized if a majority of the qualified voters of the area vote in favor of becoming a part of the city. Any three of those voters may prepare and execute an affidavit to the fact of the vote and file it with the Mayor. Upon receipt of the affidavit, certified by the Mayor, the governing body may, by ordinance, annex the area.

Section 43.028 (Petition of Area Landowners) applies only to annexation of an area that is one-half mile or less in width, is contiguous to the city's corporate limits, and is vacant and without residents, or on which fewer than three qualified voters reside. Annexation of such an area is authorized if the landowners of the area petition the governing body in writing to annex the area. The petition must describe the area by metes and bounds, and must be acknowledged in the manner required for deeds by each person having an interest in the area. The governing body must hold a hearing on the petition and hear arguments for and against annexation of the area after the 5th day but on or before the 30th day after its filing. If the governing body grants the petition, it may proceed with annexation of the area. An ordinance annexing an area under this section may be adopted after compliance with the procedural rules prescribed by Section 43.061, *et seq.;* including notice, public hearings, and completion of a municipal service plan.

In limited circumstances, general law municipalities have the authority to annex unilaterally. Section 43.026 authorizes a Type A general law municipality to annex an area that the municipality owns. Section 43.027 authorizes a general law municipality to annex any navigable stream contiguous to the municipality's corporate limits and within its ETJ. Section 43.101 authorizes a general law municipality to annex a reservoir owned by the municipality and used to supply water to the municipality, land contiguous to the reservoir and subject to an easement for flood control purposes in its favor, and the right-of-way of any public road or highway connecting the reservoir by the most direct route to the municipality. The area,

[5] Section 43.024 is applicable to a Type A general law city. A similar provision, Section 43.025, is applicable to a Type B general law city.

excluding any road right-of-way, must contain less than 600 acres, must be within 5 miles of the municipality's boundaries, and may not be in another municipality's ETJ. A municipality may annex area under this section even if part of the area is outside its ETJ, or is narrower than 1000 feet. Also, the limitations of Section 43.055, as to the amount of area that may be annexed within a calendar year, do not apply. Section 43.102 authorizes a home rule or general law municipality to annex an airport owned by the municipality and the right-of-way of any public road connecting the airport by the most direct route to the municipality. Such area may be within another municipality's ETJ, if the other municipality consents to the annexation; but none of the area may be more than 8 miles from the annexing municipality's boundaries. A municipality may annex an area under this section even if part of the area is less than 1000 feet in width. In addition, the limitation as to the amount of area that may be annexed within a calendar year does not apply. Section 43.103 authorizes a general law municipality, with a population of 500 or more, to annex the part of a street, highway, alley, or other public or private way, including a railroad line, spur, or roadbed, that is contiguous and runs parallel to the boundaries of the municipality. The requirements regarding a minimum width of 1000 feet do not apply to an area annexed under this section.

The foregoing circumstances under which a general law city may annex unilaterally are obviously limited. Broader authority for unilateral annexation by a general law city is granted under Sections 43.033 and 43.0751.

Section 43.033 authorizes a general law municipality to annex adjacent territory without the consent of the residents or voters of the area, and without the consent of any owners of land within the area under certain conditions. To take advantage of this section, the municipality must be providing the area with water or sewer services; the area cannot include unoccupied territory in excess of one acre for each service address for water and sewer service unless it is entirely surrounded by a Type A general law municipality, the municipality must have a population of 1000 or more, but less than 5000; and the municipality and affected landowners must not have entered into an agreement not to annex the area for a certain period of time.

Under the provisions of Section 43.0751, a home rule or general law city is authorized to annex a water control and improvement district, or a municipal utility district, pursuant to a "Strategic Partnership Agreement" entered into by and between the municipality and the district. This section permits a general law municipality to annex an area without the consent of the residents or voters of the area, and without the consent of any owners of land within the area. If a Strategic Partnership Agreement is entered into between the municipality and the district pursuant to this section, it "shall bind each owner and each future owner of land included within the district's boundaries on the date the agreement becomes effective." Section 43.0751(c). The agreement may provide for, among other things, limited-purpose annexation of the district (e.g. application of planning, zoning, health, and safety ordinances, and/or full-purpose annexation). On "…the full-purpose annexation conversion date set forth in the strategic partnership agreement…, the land included within the boundaries of the district shall be deemed to be within the full-purpose boundary limits of the municipality without the need for further action by the governing body of the municipality." Section 43.0751(h). Although strict procedural rules, including notice and public hearings, are required prior to adoption of a Strategic Partnership Agreement, no additional procedures for annexation are required. Annexation of an area that is

the subject of a Strategic Partnership Agreement is exempt from the annexation plan requirements of Subchapter C of Chapter 43. *See* Section 43.052 (h)(3)(B).

C. Miscellaneous Provisions Applicable to Annexation Authority. Several provisions in Chapter 43 impose limitations, prohibitions, and requirements regarding size, shape, and location of an area that may be annexed. Section 43.054 prohibits a municipality, with a population of less than 1.6 million, from annexing a publicly or privately owned area, including a strip of area following the course of a road, highway, sewer, stream, or creek, unless the width of the area at its narrowest point is at least 1000 feet. This prohibition does not apply if the boundaries of the municipality are contiguous to the area on at least two sides, the annexation is initiated on the written petition of the landowners or a majority of the qualified voters, or the area abuts or is contiguous to another jurisdictional boundary.

Section 43.0545 prohibits a municipality from annexing an area that is in the municipality's ETJ only because it is contiguous to that municipality's territory that is less than 1000 feet in width at its narrowest point.[6] This section also prohibits annexation of an area that is in the municipality's ETJ only because of a prior annexation of an area contiguous to a strip of that municipality's territory that is less than 1000 feet in width at its narrowest point, unless as a result of the "prior annexation" the narrow territory off of which it was annexed is no longer less than 1000 feet in width at its narrowest point. Prior to this limitation, many cities in Texas annexed narrow strips of territory to protect perceived growth areas from neighboring municipalities or to preclude the incorporation of adjacent areas. These provisions are intended to prohibit subsequent annexations off of these narrow strips that could not otherwise be annexed. This section exempts from its application, an area that is completely surrounded by the corporate limits of one or more municipalities, an area annexed at the request of the landowners of the area, an area that is owned by the municipality, or an area that is the subject of an industrial district contract under Section 42.044.

Section 43.055 prohibits a municipality from annexing a total area greater than 10 percent of its incorporated area as of January 1 of that year. If a municipality fails to annex the entire 10 percent permitted within a calendar year, the municipality may carry over the unused allocation for use in subsequent calendar years, provided it does not annex, within a calendar year, a total area greater than 30 percent of its incorporated area as of January 1 of that year. In determining the total area annexed in a calendar year, an area annexed is not included if it is:

> "(1) annexed at the request of a majority of the qualified voters of the area and the owners of at least 50 percent of the land in the area;
>
> (2) owned by the municipality, a county, the state, or the federal government and used for a public purpose;
>
> (3) annexed at the request of at least a majority of the qualified voters of the area; or

[6] *See City of Missouri City v. State ex rel. City of Alvin*, 123 S.W.3d 606 (Tex. App. – Houston [14th Dist.] 2003, pet. denied), for a discussion of the purpose and legislative intent of Section 43.0545.

(4) annexed at the request of the owners of the area."

Section 43.055(a).

Finally, Section 43.106 requires a municipality that proposes to annex any portion of a paved county road to annex the entire width of the county road and the adjacent right-of-way.

II.

Annexation Procedure

A. Annexation Procedure for Areas Annexed Under Municipal Annexation Plan. A municipality that desires to annex an area is required to include such area in an "Annexation Plan," unless the area is exempt from inclusion in the Plan under Section 43.052(h). Under paragraph (h), an area proposed for annexation is not required to be included within an annexation plan, or follow the procedural rules related thereto, if:

> "(1) the area contains fewer than 100 separate tracts of land on which one 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 by Subchapter B;
>
> (3) the area is or was the subject of:
>
> (A) an industrial district contract under Section 42.044; or
>
> (B) a strategic partnership agreement under Section 43.0751;
>
> (4) the area is located in a colonia, as that term is defined by Section 2306.581, Government Code;
>
> (5) the area is annexed under Section 43.026, 43.027, 43.029, or 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."

The requirement of inclusion of an area within an annexation plan is primarily applicable to home rule cities that desire to unilaterally annex populated areas containing one hundred or more tracts of land. Because general law cities primarily annex territory upon the request of area voters or petition of landowners of the area that is exempt from the requirement of inclusion in an annexation plan, the annexation of an area by a general law city under a municipal annexation plan would only occur in limited circumstances.[7]

An area required to be included in an annexation plan may only be annexed upon compliance with the procedures provided in Section 43.052. An area specifically identified in a plan may not be annexed by the municipality sooner than three years after the date of adoption of the plan, and such annexation must be completed before the 31st day after the third anniversary of the date the area was included in the plan. Considering the required number, timing, and deadlines for notices, hearings, and adoption of an annexation ordinance, precise and accurate planning is required by city officials.

A plan may be amended to include additional areas to be annexed; however, the area that is the subject of the amendment may not be annexed prior to the third anniversary of the date of adoption of the amendment and such annexation must be completed before the 31st day after the third anniversary of the date the area was included in the plan. Section 43.052(c) and (g). Sever penalties are imposed if the municipality fails to complete the annexation of an area included in the plan within the time limits prescribed, or if an area is removed from the plan by amendment. If annexation of an area in a plan is not completed within the period prescribed (before the 31st day after the third anniversary of the date the area was included in the plan), the municipality may not annex such area before the fifth anniversary of the last day that annexation of such area could have been completed. In other words, if annexation of an area in a plan is not completed within the period prescribed, in order to annex the area, the municipality must wait at least two years from the prior required completion date before it can amend its annexation plan to include the area, and it must again comply with the required procedures as set forth in Section 43.052. Section 43.052(g).

If a municipality amends its annexation plan to remove an area proposed for annexation, restrictions are imposed that limit the municipality's ability to include such area in its plan by a future amendment. If, before the end of the 18th month after the month an area was included in an annexation plan, the municipality amends its plan to remove the area, the municipality may not amend the plan again to include the area until the first anniversary of the date of the amendment that removed the area from the plan. If a municipality removes an area from its annexation plan during or after 18 months after the month the area was included in the plan, the municipality may not again amend its plan to include the area until the second anniversary of the date of the amendment that removed the area from the plan. Section 43.052(e). In either event, upon amendment of its annexation plan to include an area, the municipality must again comply with the procedures as set forth in Section 43.052.

[7] A unilateral annexation by a general law city under the provisions of Sections 43.101 (reservoir), 43.102 (airport), 43.103 (roadway), or 43.033 (area provided water or sewer service), must be made under a municipal annexation plan, unless the area proposed for annexation is exempt from annexation plan requirements under one of the provisions of Section 43.052(h).

A city may amend its annexation plan as often as it deems appropriate. Obviously, annexation under an annexation plan requires strategic planning on the part of city officials. Failure to complete an annexation within the period required, or removal of an area from the plan by amendment, may have an adverse effect on a municipality's ability to annex other areas in the plan. Sequential annexations of territory under a plan may be required in order for subsequent annexations to be contiguous to its corporate limits. This will require precise timing and sequence in amendments to the plan, and attention to the limits and boundaries of each proposed annexation. Absent such planning, failure to timely complete an annexation or the removal of an area from the plan, may preclude the subsequent annexation of other areas proposed for annexation under the plan.

Although there is no specific notice, hearing, or procedure required prior to adoption or amendment of a municipal annexation plan, if the City has a website, it must post and maintain thereon the annexation plan; including any amendments to include an area in or remove an area from the plan. Section 43.052(j). An amendment to include an area in the plan must be maintained on the website until the area is annexed. An amendment to remove an area from the plan must be maintained on the website until the date the area may again be included. Once the annexation plan is adopted or amended, certain procedures must be followed regarding notice, inventory of services and facilities, a municipal services plan, and public hearings.

1. Notice Requirements After Adoption of Plan. Before the 90th day after the date the municipality adopts or amends an annexation plan, it must give written notice to each property owner within the affected area, each public entity (municipal utility district, water control and improvement district, municipality, county, and fire protection and medical service provider) or private entity that provides services within the area proposed for annexation, and each railroad company that is on the city's tax roll and has right-of-way within the area proposed for annexation. Section 43.052(f). In the notice to each public or private entity that provides services within the proposed annexation area, the municipality must request the information necessary to compile an inventory of services and facilities. Section 43.053(c). Ownership of property is as indicated on the central appraisal district's records; however, determination of which public or private entities provide services to the area must be investigated and identified by the municipality prior to the deadline for giving the required notice.

2. Inventory of Services and Facilities. One of the principal purposes for the comprehensive changes made in 1999 to the annexation laws was to ensure that adequate municipal services would be provided by cities to the areas they annex. The first step is to inventory the services and facilities of the area proposed to be annexed. After adoption of the plan, the municipality must compile a comprehensive inventory of the services and facilities provided by public or private entities, directly or by contract, within each area proposed for annexation. The inventory must include all services and facilities that the municipality is required to provide or maintain following the annexation. Section 43.053(b). Information in the inventory is based on the services and facilities provided during the year preceding the date of adoption or amendment of the annexation plan. The public or private entity is required to provide to the municipality information held by the entity that is necessary to compile the inventory. Such information, which must be

included in the inventory, includes the type of service provided, the method by which the service is delivered, and certain additional information. Section 43.053(c).

For utility facilities, roads, drainage structures, and other infrastructure provided or maintained, the information must include:

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

(b) a summary of capital, operational, and maintenance expenditures for that infrastructure.

Section 43.054(e).

For police, fire, and emergency medical services provided:

(a) the average dispatch and delivery time;

(b) a schedule of equipment, including vehicles;

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

(d) a summary of operating and capital expenditures.

Section 43.054(f).

Information required to be provided by a public or private entity must be provided to the municipality not later than the 90th day after the date the municipality requests the information, unless the municipality agrees to extend the period for providing the information. If the entity fails to provide such information within the time required, the municipality is not required to include the information in the inventory. Sec. 43.053(c). The municipality also has the right to monitor the services provided in the area proposed for annexation and verify the inventory information. Section 43.053(h). On or before the 60th day after the date the municipality receives the required information, it must complete the inventory and make it available for public inspection. Section 43.053(g).

3. Municipal Service Plan. Before the first day of the 10th month after the month in which the "Inventory" is prepared, the municipality must complete a municipal service plan that identifies the municipal services that will be provided to the area proposed to be annexed; including the method of providing such services, the level of such services, and when such services will be provided. The service plan must provide for the extension of "full municipal services" to the area to be annexed. Section 43.056. "Full municipal services" means the same type of services provided by the municipality within its boundaries (excluding areas annexed for limited purposes), including water and wastewater services, but excluding gas and electrical services. Section 43.056(c). These

services must be provided by any method by which the municipality extends such services to any other area within the municipality.

(a) Required Municipal Services. Certain services must be provided on the effective date of the annexation if they are provided by the municipality within its boundaries before the annexation. These services are:

(1) police protection;

(2) fire protection;

(3) emergency medical services;

(4) solid waste collection;

(5) operation and maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater 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.

Section 43.056(b).

The service plan must include a program under which the municipality will provide the remaining services within the annexed area not 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 for providing those services. If an extended period is scheduled for providing certain services, the schedule must provide for provision of full municipal services not later than 4½ years after the effective date of the annexation. Section 43.056(b).

The service plan must include a program under which the municipality will initiate, after annexation, acquisition or construction of the capital improvements necessary for providing municipal services adequate to serve the area. Construction of required capital improvements must be substantially completed within the time provided in the plan, unless the plan is amended to extend the period under circumstances where the construction is proceeding with all deliberate speed. Construction of facilities must be accomplished in a continuous process and must be completed as soon as reasonably possible,

consistent with generally accepted local engineering and architectural standards and practices. Section 43.056(e).

Determination of required capital improvements is particularly important in the development of a service plan. The level of municipal services required under Section 43.056 will dictate what capital improvements are required to serve the area annexed. A uniform level of municipal services is not required to be provided to each area of a municipality if different characteristics of topography, land use, and population density constitute a sufficient basis for providing different levels of services. Section 43.056(m).

If the area to be annexed has a lower level of services, infrastructure, and infrastructure maintenance than the level provided within the municipality, the service plan must provide the area to be annexed with a level of services, infrastructure, and infrastructure maintenance that is comparable to the level of services, infrastructure, and infrastructure maintenance available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected within the area. Section 43.056(g). The most likely circumstance where substantial capital improvements are required to be provided for in a service plan, is a situation where the level of services, infrastructure, and infrastructure maintenance is lower than the level provided within the municipality. For example, if a municipality owns a water and wastewater utility, it must extend water and wastewater services to any annexed area not within the service area of another water and wastewater utility, if the municipality provides water and wastewater service to other areas within the municipality that have similar characteristics of topography, land use, and population density to those reasonably contemplated or projected within the annexed area. Conversely, if municipal water and wastewater service is not provided in other areas within the municipality, which have similar characteristics to the area proposed to be annexed, the extension of water and wastewater services, including capital improvements related thereto, are not required to be included within the service plan. However, the service plan is required to summarize the service extension policies of the municipal water and wastewater utility. Section 43.056(d).

If the area to be annexed has a level of services, infrastructure, and infrastructure maintenance equal to the level provided within the municipality before annexation, the service plan must provide for maintaining that same level of services, infrastructure, and infrastructure maintenance. If the area to be annexed has a level of services, infrastructure, and infrastructure maintenance superior to the level provided within the municipality before annexation, the service plan must provide the annexed area with a level of services comparable to that available in other parts of the municipality with topography, land use, and population density similar to those reasonably contemplated or projected within the annexed area. Provided, however, if the area to be annexed has a level of services for operating and maintaining infrastructure of the area, including water and wastewater facilities, roads and streets, parks, playgrounds, swimming pools,

and other publicly owned facilities or buildings, superior to the level provided within the municipality, the service plan must provide for operation and maintenance of the infrastructure within the annexed area at a level of service that is equal or superior to the level of service provided within the area. Section 43.056(g).[8]

(b) Adoption of the Service Plan. A proposed service plan must be made available for public inspection and explained to the inhabitants of the area proposed for annexation at the public hearings required to be conducted not later than the 90th day after the date the inventory is available for public inspection. Section 43.056(j) and Section 43.0561(a). Although a proposed service plan must be available for inspection and explained at the required public hearings, it is not required to be completed until the first day of the 10th month after the month in which the inventory is prepared, up to nine months after the public hearings. This period of time will allow for any required negotiation between the municipality and property owners of the area proposed for annexation, or the municipality and any "special district" within the area, regarding service plan issues.

At the required public hearings, the proposed service plan may be amended as a result of negotiations at such hearings. After holding the hearings, if the municipality proposes to annex a "special district" (water control and improvement district, municipal utility district, or other district created under Article III, Section 52 or Article XVI, Section 59 of the Texas constitution), the municipality and the district are required to negotiate for the provision of services to the area after annexation or for the provisions of services to the area in lieu of annexation under a strategic partnership agreement. Section 43.0562. Additionally, after holding the hearings, if there remains a dispute or unresolved issue between the property owners of the area proposed for annexation and the municipality, the municipality, if it has a population of less than 1.6 million, must negotiate with representatives of the property owners for provision of services to the area. Section 43.0562. For purposes of these negotiations, the commissioners court(s) of the county(ies) in which the area proposed for annexation is located shall select five representatives to negotiate with the municipality. Section 43.0562(b).

The governing body of a municipality with a population of less than 1.6 million may, instead of negotiating the terms of the service plan, negotiate and enter into a written agreement with the selected property owner representatives for provision and funding of services within the area. The agreement may contain provisions relating to permissible land uses and required compliance with municipal ordinances. Such an agreement would be in lieu of annexation. Section 43.0563.

[8] In a municipality with a population of more than 1.6 million, there are additional service plan requirements regarding water and sewer services. *See* Section 43.0567.

If the municipality and the selected property owner representatives cannot reach agreement on provision of services under the plan, or an agreement for provision of services in lieu of annexation, either party by majority decision of the party's representatives, may request appointment of an arbitrator to resolve the service plan issues. Such request must be made in writing to the other party before the 60th day after the service plan is completed. The arbitrator's authority is limited to issuing a decision relating only to the service plan issues in dispute. Unless the arbitrator finds that the request by the landowners' representatives for arbitration was groundless or made in bad faith, the municipality is required to pay the cost of the arbitration. Either party may appeal any provision of the arbitrator's decision that exceeds his authority to a district court in a county in which the area proposed for annexation is located. The municipality may not annex the area under authority of any other provision in Chapter 43 during pendency of arbitration proceedings or any appeal from the arbitrator's decision. If the municipality does not agree with or accept the terms of the arbitrator's decision, it may not annex the area before the 5th anniversary of the date of the arbitrator's decision. Section 43.0564.

If the service plan is approved by the governing body of the municipality after public hearings, negotiation, and required arbitration proceeding, it becomes a contractual obligation of the municipality. After such approval, and prior to final adoption at the time the area is annexed, the plan may, however, be amended or repealed if the governing body determines, after additional public hearings, that changed conditions or occurrences subsequent to its initial approval make the service plan unworkable or obsolete. In such circumstance, and after such proceedings, the plan may be amended to conform to the changed conditions or subsequent occurrences, provided the services are comparable to or better than those established in the plan before the amendment. Sec. 43.056(k). Arguably, the amended service plan must be negotiated and may be arbitrated the same as the original plan. The service plan approved upon adoption of the ordinance annexing the area is valid for a period of 10 years, unless it is renewed at the discretion of the municipality. Section 43.056(l).

It should be noted that if the municipality includes within its plan an area to be annexed that includes a water control and improvement district or municipal utility district,[9] the municipality must, upon written request of the district, negotiate a strategic partnership agreement with the district. Section 43.0751(b). A strategic partnership agreement may provide for the following:

(1) limited-purpose annexation of the district on terms acceptable to the municipality and the district, provided that the district

[9] Under the provisions of Section 43.071, a municipality may not annex area in a water control and improvement district or municipal utility district, unless it annexes the entire part of the district that is outside the municipality's boundaries. Annexation may include the area of the district beyond the municipality's ETJ, if the district has at least one-half of its area within the municipality or its ETJ. This requirement does not apply if the governing body of the district and the landowners of the area to be annexed consent to the annexation and the area to be annexed does not exceed 525 feet in width, or the district has noncontiguous area not within the municipality's ETJ.

shall continue in existence during the period of limited-purpose annexation;

(2) payments by the municipality to the district for services provided by the district;

(3) annexation of any commercial property in a district for full purposes by the municipality in lieu of any annexation of residential property or payment of any fee on residential property in lieu of annexation of residential property within the district;

(4) a full-purpose annexation provision on terms acceptable to the municipality and the district;

(5) conversion of the district to a limited district including some or all of the land included within the boundaries of the district, which conversion shall be effective on the full-purpose annexation conversion;

(6) that agreements existing between district and governmental bodies and private providers of municipal services in existence shall be continued and provision made for modifications to such existing agreements;

(7) that the district may not incur additional debt, liabilities, or obligations, to construct additional utility facilities, or sell or otherwise transfer property without prior approval of the municipality; and

(8) such other lawful terms that the parties consider appropriate.

Section 43.0751(f) and (i).

A strategic partnership agreement may not require the district to pay the municipality solely for the purpose of obtaining an agreement to forego annexation; and it must provide benefits to both parties, including revenue, services, and regulatory benefits that are reasonable and equitable, considering the benefits provided by the other party. Section 43.0751(p).

Before a strategic partnership agreement may be adopted, the municipality and the district must conduct two public hearings at which members of the public may present testimony or evidence regarding the proposed agreement. Section 43.0751(d). The governing body of the municipality may not adopt the strategic partnership agreement before the agreement has been adopted by the governing body of the district. Section 43.0571(e).

If the municipality and the district fail to agree on the terms of a strategic partnership agreement, either party may seek arbitration to resolve issues in dispute. Section 43.0751(o). A request for arbitration must be made in writing to the other party before the 60th day after the date the district submits the request for negotiation. The municipality may not annex the district under authority of any other provision of Chapter 43 during the pendency of the arbitration proceeding or an appeal from such decision. Appointment of an arbitrator and the conduct of the arbitration proceedings are under the same rules applicable to an arbitration proceeding between the municipality and landowner representatives regarding a municipal service plan. However, the authority of the arbitrator is limited to determining whether the municipality is requiring revenue from the district solely for the purpose of obtaining an agreement to forego annexation, and whether the agreement provides benefits to each party that are reasonable and equitable with regard to the benefits provided by the other. The municipality and the district are required to equally share the cost of the arbitration.

4. Public Hearings Required Under an Annexation Plan. Before a municipality may institute annexation proceedings under an annexation plan, its governing body must conduct two public hearings at which interested persons are given the opportunity to be heard. The hearings must be conducted not later than the 90th day after the date the inventory is available for inspection. At least one of the hearings is required to be held within the area proposed for annexation if a reasonably suitable site is available and more than 20 adults who are permanent residents of the area file a written protest with the City Secretary within 10 days after the date of publication of notice of the hearings. The municipality must also post notice of the hearings on its website, if it has one. Notice of each hearing must be published in a newspaper of general circulation within the municipality and the area proposed for annexation at least once on or after the 20th day, but before the 10th day, before the date of the hearing. Website posting must be made within the same time period, but must remain posted until the date of the hearing. The municipality must give additional notice by certified mail to each: (1) municipal utility district, water control and improvement district, any other district created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution, municipality, county, fire or emergency medical service provider, and any utility service provider that provides services within the area proposed for annexation; and (2) each railroad company on its tax rolls that has right-of-way within the area proposed for annexation. Section 43.0561.

Although Section 43.0561 does not specify when such notice must be given, it is suggested that such notice be given at least 10 days prior to the date of the first required public hearing. The municipality must also give written notice of a proposed annexation to each school district located within such area. The notice to each school district must be given on or after the 20th day, but before the 10th day, before the date of the first required public hearing. The notice must contain (1) the area within the school district proposed for annexation; (2) any financial impact on the school district resulting from the annexation, including any changes in utility costs; and (3) any proposal the municipality has to abate, reduce, or limit any financial impact on the school district. The municipality may not proceed with the annexation unless it provides this required notice. Section 43.905.

B. Annexation Procedures for Areas Exempt from Municipal Annexation Plan.

1. Areas Exempt. Section 43.052(h) provides a number of exemptions from the requirement that an area proposed for annexation be included within an annexation plan. Under these circumstances, the provisions of Section 43.052 do not apply, the municipality is not required to wait three years before annexing an area, and the process and procedures for annexation are governed under the simplified rules of Chapter C-1 of Chapter 43, Annexation Procedure for Areas Exempt from Municipal Annexation Plan. The types of areas that are exempt from inclusion in a plan are as follows:

a. An area containing fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract. Although this provision may be subject to more than one interpretation, the most reasonable and logical interpretation is that the proposed area may have any number of tracts, so long as no more than 99 of those tracts contain one or more residential dwellings.[10] This exemption is primarily used by home rule cities to unilaterally annex mostly vacant land. Section 43.052(h)(1).

b. An area annexed on petition of more than 50 percent of the real property owners of the area or by vote or petition of the qualified voters or real property owners under the provisions of Section 43.024 (Request of Area Voters) or Section 43.028 (Petition of Area Landowners). Section 43.052(h)(2). A home rule or general law city may annex an area under this exemption upon the request of area voters. The annexation is authorized if a majority of the voters of the area are in favor of such annexation, and such fact is evidenced by affidavit of three of the voters filed with the municipality. A home rule city may annex an area under this exemption upon petition of more than 50 percent of the real property owners of the area. A general law city may only annex an area under this exemption on petition of the landowners if it complies with Section 43.028. The petition must be executed by all landowners of the area, and the area must be vacant and without residents, or on which fewer than three qualified voters reside. Section 43.052(h)(2).

c. An area which is the subject of an Industrial District Agreement under Section 42.044. Section 43.052(h)(3). Section 42.044 authorizes a municipality to designate an area within its ETJ as an industrial district, and to contract with the owners of land within such district, to guarantee that the area within the district will not be annexed for a period not to exceed 15 years. At the end of the contract term, the

[10] This interpretation has also been adopted by the Texas Municipal League. See *Annexation Update*, Scott N. Houston, Assistant General Counsel, Texas Municipal League, TCAA Semi-Annual Conference, June 5-7, 2002, p. 16.

municipality may annex the area without including it in an annexation plan.

d. An area which is the subject of a Strategic Partnership Agreement, entered into pursuant to Section 43.0751. Section 43.052(h)(3**)**. Under Section 43.0751, a municipality and a water control and improvement district or a municipal utility district may enter into a strategic partnership agreement, which may provide, among other things, for the limited and/or full purpose annexation of the district. On the full purpose conversion date set forth in the agreement, land included within the district shall be deemed to be within the full purpose boundaries of the municipality without the need for further action by the governing body of the municipality. Section 43.0751(h).

e. An area that the municipality owns, an adjacent navigable stream, or an adjacent area on petition by a school district occupying such area. Also, an area exchanged between adjacent municipalities that is less than 1000 feet in width. Section 43.052(h)(5).

f. An area located in a colonia, as that term is defined in Section 2306.581 of the Texas Government Code, and an area located completely within the boundaries of a closed military installation. Section 43.052(h)(5) and (6).

g. An area for which a municipality has determined that annexation is necessary to protect the area or the municipality from imminent destruction of property or injury to persons, or a condition or use that constitutes a public or private nuisance. Section 43.052(h)(7).

A municipality is prohibited from proposing to separately annex two or more areas under the "100 tract" exemption to circumvent the requirement that an area be included in an annexation plan. Under Section 43.052(i), if a municipality proposed to annex two or more adjacent areas under this exemption, it must be prepared to demonstrate that reason exists under generally accepted municipal planning principles and practices for annexation of the areas separately. If a municipality proposes to separately annex areas under this exemption, a person residing or owning land within the area may petition the municipality to include the area in its annexation plan. If the municipality fails to take action on the petition to include the area in its annexation plan, the petitioner may request arbitration of the dispute[11]. The procedures for appointment of an arbitrator and the conduct of the arbitration proceedings are the same as those required under Section 43.0564 arbitration regarding a municipal service plan.

Under the foregoing circumstances, the area proposed for annexation is not required to be included in a municipal annexation plan prior to annexation. Instead,

[11] *See Hughes v. City of Rockwell,* 153 S.W.3d 709 (Tex. App. – Dallas 2005, pet. filed) for an interpretation of Section 43.052(i) regarding the right of arbitration.

annexation of the area may be accomplished by compliance with the rules and procedures set forth in Subchapter C-1 of Chapter 43, Annexation Procedure for Areas Exempt from Municipal Annexation Plan.

2. Special Notice Requirements. If the area proposed to be annexed is exempt from inclusion in an annexation plan under the "100 Tract" exemption, specific notice provisions are applicable. Before the 30th day before the date of the first required public hearing on the proposed annexation, the municipality must give written notice of its intent to annex to:

a. each property owner in the area, as indicated by the records of the county's central appraisal district;

b. each municipal utility district created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution, municipality, county, fire or emergency medical service provider, or private entity that provides services in the area; and

c. each railroad company on the municipality's tax role that has right-of-way within the area. Notice required to be given to a railroad company must be given by certified mail. Section 43.063(c). Section 43.062(b).

Prior to annexation of any area exempt from inclusion in an annexation plan, the municipality must give written notice of the proposed annexation to each school district located within the area proposed to be annexed. The notice must be given on or after the 20th day, but before the 10th day, before the date of the first public hearing. The notice must contain (1) a description of the area within the district proposed for annexation; (2) any financial impact on the district resulting from the annexation, including any changes in utility costs; and (3) any proposal the municipality has to abate, reduce, or limit any financial impact on the district. Section 43.905. The notice required to be given to each railroad company located within an area included in an annexation plan, is also applicable to annexation of any area exempt from inclusion in an annexation plan.

3. Annexation Hearing Requirements for Annexation of Area Exempt from Annexation Plan. Before a municipality may annex an area exempt from inclusion in an annexation plan, the governing body must conduct two public hearings at which interested persons are given the opportunity to be heard. The hearings must be conducted on or after the 40th day, but before the 20th day, before the date of institution of the annexation proceedings. "Institution of annexation proceedings" means adoption of an ordinance annexing the area if a single reading is required. If multiple readings of an ordinance or additional procedural steps are required by a home rule charter, adoption of an ordinance on first reading, or the approval of the first procedural step by the governing body, constitutes initiation of the proceedings. *City of Duncanville v. City of Woodland Hills*, 489 S.W.2d 557 (Tex. 1972); *Knapp v City of El Paso*, 586 S.W.2d 216 (Tex. Civ. App. – El Paso 1979, writ ref'd n.r.e.). At least one of the hearings is required to be held within 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 with the city secretary within 10 days after the date of publication of notice of the hearings. Notice of each hearing must be published in a newspaper of general circulation within the municipality and the area proposed for annexation at least once on or after the 20th day, but before the 10th day, before the date of the hearings. The municipality must also post notice of the hearings on its website, if it has one. Website posting must be made within the same time period, but must remain posted until the date of the hearing. Section 43.063(b) and (c).

4. Period for Completion of Annexation. Annexation of an area exempt from inclusion in an annexation plan must be completed within 90 days after the date the governing body institutes the annexation proceedings. The governing body must "initiate the annexation proceedings" not earlier than 21 days after the last required hearing and not later than the 40th day after the first required hearing. The 90-day period to complete an annexation is applicable only to municipalities that, by charter, have multiple reading or procedural requirements to finally adopt an annexation ordinance. If the ordinance is not finally adopted within 90 days after such initial approval, the proceedings are void. Any period during which the municipality is restrained or enjoined by a court from annexing the property is not included in computing the 90-day period. Section 43.064.

5. Municipal Service Plan for Area Exempt From Annexation Plan. Before publication of notice of the first required public hearing, the municipality's governing body is required to direct its planning department or other appropriate municipal department to prepare a service plan that provides for extension of full municipal services to the area proposed to be annexed. Section 43.065. The plan must include the method of providing such services, the level of the services, and when such services will be provided. "Full municipal services" means the same type of services provided by the municipality within its boundaries, including water and wastewater services, but excluding gas and electric services. Section 43.056(c). The municipality must provide the services by any of the methods by which it extends the services to any other area of the municipality. The specific requirements of a municipal service plan for an area proposed to be annexed, which is exempt from inclusion in an annexation plan, are set forth in Section 43.056(b)-(o).[12] The requirements of Section 43.053 (Inventory of Services and Facilities), Section 43.0562 (Negotiation for Services), and Section 43.0564 (Arbitration Regarding Negotiations for Services) are not applicable to the development of a municipal service plan for an area exempt from inclusion in an annexation plan.

III.
General Authority for Limited-Purpose Annexation

Under the provisions of Subchapter F of Chapter 43, the governing body of a home rule municipality with a population of more than 225,000 may, by ordinance, annex an area for the limited purpose of applying its planning, zoning, health, and safety ordinances within the area. Section 43.121(a). An area proposed to be annexed for limited purposes must be within the municipality's ETJ and contiguous to its corporate boundaries, unless the owner of such area

[12] For a detailed discussion of these requirements, see "Required Municipal Services," p. 10.

consents to the noncontiguous annexation. Section 43.121(b). A municipality may not annex for limited purposes any strip of territory that is less than 1000 feet in width at its narrowest point, and is located farther than three miles from a municipality's preexisting boundaries, unless the area is annexed upon the consent of the landowner. Section 42.122.

Before the 10th day before the date of the first required public hearing, the municipality must prepare a report regarding the proposed limited-purpose annexation and make the report available for public inspection. Notice of availability of the report must be published twice in a newspaper of general circulation within the area proposed to be annexed. Section 43.123(b). The report must contain the results of a planning study and regulatory plan for the area. Section 43.123(a). The planning study must: (1) project the kinds and levels of development that will occur within the area in the next 10 years if the area is not annexed for limited purposes and also if the area is annexed for limited purposes; (2) describe the issues that the municipality considers to give rise to the need for annexation of the area for limited purposes and the public benefits to result from the limited-purpose annexation; (3) analyze the economic, environmental, and other impacts that annexation of the area for limited purposes will have on the residents, landowners, and businesses in the area; and (4) identify the proposed zoning of the area on annexation and inform the public that any comments regarding the proposed zoning will be considered at the public hearings for the proposed limited-purpose annexation. The regulatory plan must: (1) identify the kinds of land use and other regulations that will be imposed within the area if it is annexed for limited purposes; and (2) state the date on or before which the municipality will annex the area for full purposes, which must be within three years after the date the area is annexed for limited purposes. The deadline for full-purpose annexation contained in the regulatory plan does not apply to an area that: (1) is owned by the United States, this state, or a political subdivision of this state; (2) is located outside the boundaries of a water control and improvement district or a municipal utility district; and (3) is annexed for limited purposes in connection with a strategic partnership agreement under Section 43.0751. Section 43.123(c), (d), and (e).

Before instituting proceedings for annexation of an area for limited purposes, the governing body must conduct two public hearings at which members of the public must be given the opportunity to present testimony or evidence regarding the proposed annexation. The hearings must be held on or after the 40th day, but prior to the 20th day, before annexation proceedings are initiated. On or after the 20th day before each hearing, notice of such hearings must be published in a newspaper of general circulation within the municipality and within the area proposed for annexation. Section 43.124.

The governing body must "initiate the annexation proceedings" not earlier than the 21st day after the last required hearing and not later than the 40th day after the first required hearing. Annexation of an area for limited purposes must be completed within 90 days after the date the governing body institutes annexation proceedings. As in a full-purpose annexation of an area exempt from inclusion in an annexation plan, failure to initiate annexation proceedings within the required period will require new notices and additional hearings. The 90-day period to complete the annexation is applicable only to municipalities that, by charter, have multiple reading or procedural requirements to finally adopt a limited purpose annexation ordinance. In such case, the governing body must finally adopt the annexation ordinance within 90 days after it initiates annexation proceedings. Section 43.126. At the time the governing body finally adopts

an ordinance annexing an area for limited purposes, it must also adopt the regulatory plan for the area. Section 43.125.

After annexation of an area for limited purposes, the municipality must take certain steps toward full-purpose annexation of the area. These steps must be taken within each of the three years after annexation for limited purposes. By the end of the first year after the date of such annexation, the municipality must develop a land use and intensity plan as a basis for services and capital improvement projects planning. By the end of the second year after the date of the annexation, the area must be included in the municipality's long-range financial forecast and its program to identify future capital improvement projects. By the end of the third year after the date of annexation, the municipality must include the projects intended to serve the area in its adopted capital improvements program, and must identify potential sources of funding for capital improvements. Section 43.127.

If an area annexed for limited purposes under the authority of Subchapter F of Chapter 43 is required to be annexed for full-purposes under the provisions of its adopted regulatory plan, the procedure for such full-purpose annexation are those prescribed for areas annexed under a municipal annexation plan, unless the area is exempt from inclusion in a plan under Section 43.052(h). In either case, a municipal service plan must be developed and adopted under Section 43.056 or Section 43.065, in conjunction with the full-purpose annexation, in addition to the steps required by Section 43.127 discussed above. Precise scheduling is required if an area proposed for limited-purpose annexation is required by its regulatory plan to be annexed for full-purposes within three years after the date it is annexed for limited purposes. If the area is required to be included in a municipal annexation plan, such inclusion must be precisely timed to ensure compliance with the procedural steps to annex the area for limited purposes, and to accomplish full-purpose annexation within 30 days after the third anniversary of the date the area was included in the annexation plan and within three years after the date the area is annexed for limited purposes.

IV.

General Disannexation Authority

A. Home Rule Municipalities. A home rule municipality may disannex an area within the municipality in accordance with the rules provided by its charter that are not inconsistent with the procedural rules prescribed in Chapter 43. Section 43.142.

B. General Law Municipalities. There are two basic means by which a general law municipality may discontinue an area as part of the municipality. The first method is by election. If at least 50 qualified voters of an area within the municipality, by petition presented to the mayor, request that the area be discontinued as a part of the municipality, an election within the municipality on the question must be ordered. The petition must be signed by each petitioner[13] and must describe the area by metes and bounds. If a majority of the votes received in the election favor discontinuing the area as part of the municipality, the mayor must, by order,

[13] Section 277.002 of the Texas Election Code imposes conditions and requires specific information, in addition to the signature, before a petition signature is valid.

declare the area no longer part of the municipality. An area may not be disannexed under this procedure if the disannexation would result in the municipality having less area than one square mile or less than one mile in diameter around the center of the original municipal boundaries. Furthermore, if an area is disannexed under this procedure, and at the time of the disannexation, the municipality has outstanding indebtedness, the area is not released from its pro rata share of that indebtedness and the municipality must continue to levy a property tax each year on property within the area until the debt is retired. The property owners may pay their pro rata share of the indebtedness in full, at any time. Section 43.143.

Under the second method, a general law municipality may disannex an area by ordinance if the area consists of at least 10 acres contiguous to its boundaries and is uninhibited or contains fewer than one occupied residence or business structure for every two acres and fewer than three occupied residences or business structures on any one acre. Section 43.144.

Under the provisions of Section 43.148, if an area is disannexed, the municipality disannexing the area must refund to the landowners of the area the amount of money collected from the landowners by the municipality in property taxes and fees during the period that the area was a part of the municipality, less the amount of money the municipality spent for the direct benefit of the area during such period. The municipality must develop a method to identify each landowner's pro rata refund. Any required refund must be made to the current landowners within the area not later than 180 days after the date the area is disannexed. Money that is not refunded within this period accrues interest at a prescribed rate. Section 43.148.

V.

Continuation of Land Use After Annexation

Section 43.002 grants certain vested rights regarding use and development of property annexed into a municipality. Under the provisions of this section, a municipality may not, after annexing an area, prohibit a person from (1) continuing a lawful use of land in the area in the manner in which it was used prior to the date the annexation proceeding was initiated, or (2) beginning to use land within the area in a manner that was "planned for the land" before the 90th day before the effective date of the annexation.

Before a person has a vested right to begin a "planned use of land" in an annexed area after the effective date of the annexation, it must be established that (1) such use was planned more than 90 days before the effective date of the annexation; and (2) that a completed application was filed with a governmental entity for some permit, license, or authorization required by law for the planned land use before the date the annexation proceedings were instituted. An annexation ordinance must be finally adopted within 90 days after the proceedings were instituted. Typically, the effective date of an annexation ordinance is the date of its final adoption and such date occurs less than 90 days after the proceedings were instituted. Therefore, unless the completed application was filed at least 90 days before the effective date of the annexation, additional evidence would be required to substantiate that the use was planned more than 90 days before the effective date of the annexation.

This section does not prohibit a municipality from imposing:

(1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;

(2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581 of the Texas Government Code;

(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.

VI.

Challenges to an Annexation

A. Quo Warranto vs. Collateral Attack. The only proper method for attacking the validity of a city's annexation of territory is by quo warranto proceeding, unless the annexation is wholly void. *Laidlaw Waste System (Dallas) Inc. v. City of Wilmer*, 904 S.W. 2d 656 (Tex. 1995); *Alexander Oil Company v. City of Sequin*, 825 S.W.2d 434 (Tex. 1991). A quo warranto proceeding is a direct attack by the State, brought to question the irregular use of a municipality's annexation authority. Through a quo warranto proceeding, the State acts to protect itself and the good of the public. It offers a remedy that settles the issue of validity of an annexation on behalf of all property owners in the affected area.

A private challenge, or collateral attack, of an annexation ordinance has been sustained in the limited circumstances in which the ordinance was held void ab initio (void from the beginning). A collateral attack must show an entire want of power, not a mere irregularity in the exercise of annexation authority. *May v. City of McKinney*, 479 S.W.2d 114 (Tex. Civ. App. – Dallas 1972, writ ref'd n.r.e.). An act unauthorized by law or color of law may be challenged by collateral attack, but mere irregularities in the exercise of annexation authority must be brought by quo warranto. *Universal City v. City of Selma*, 514 S.W.2d 64 (Tex. Civ. App. – Waco 1974, writ ref'd n.r.e.). A challenge directed at irregularities, which would render an annexation ordinance voidable only, must be brought by quo warranto. *Irving v. Calloway*, 363 S.W.2d 832 (Tex. Civ. App. – Dallas 1962, writ ref'd n.r.e.).

In the following instances, a collateral attack has been sustained and the annexation ordinance held void: annexation of territory exceeding size limitations, *Deacon v. City of Euless*, 405 S.W.2d 59 (Tex. 1966); annexation of territory within the corporate limits or ETJ of another city, *City of West Orange v. State, ex rel City of Orange*, 613 S.W.2d 236 (Tex. 1981); annexation of territory that is not contiguous to the city's boundaries, *City of Waco v. City of McGregor*, 523 S.W.2d 649 (Tex. 1975); annexation of unoccupied territory by general law city without the landowners' consent, *City of Northlake v. East Justin Joint Venture*, 873 S.W.2d 413 (Tex. App. – Fort Worth 1994, writ denied)*;* and annexation in which the description of the boundaries of the annexed territory do not close, *State ex rel Rose v. City of La Porte*, 386 S.W.2d 782 (Tex. 1965). In *Alexander Oil*, the Supreme Court indicates that an annexation of an area outside the city's ETJ, unless legislatively authorized, annexation of an amount of territory in excess of the limits permitted in one year, and a prohibited strip annexation would be unauthorized by law and void. 825 S.W.2d at 438.

Procedural irregularities, such as noncompliance with notice provisions, defective notice, sufficiency, irregularity or timing of required hearings, failure to follow required procedures relating to adoption of a municipal annexation plan, adequacy of a service plan, and defect of a petition to annex, may only be challenged by the State in a quo warranto proceeding, because such irregularities do not render the annexation void, but merely raise an issue that may make it voidable. *Alexander Oil Company v. City of Sequin*, 825 S.W.2d 434 (Tex. 1991); *Kuhn v. City of Yoakum*, 6 S.W.2d 91 (Tex. Comm'n App. 1928, judgm't adopted); *Werthmann v. City of Fort Worth*, 121 S.W.3d 803 (Tex. App. – Fort Worth 2003, no pet.); *City of Balch Springs v. Lucas*, 101 S.W.3d 116 (Tex. App. – Dallas, 2002); *City of San Antonio v. Hardee*, 70 S.W.3d 207 (Tex. App. – San Antonio, 2001, no pet.); *City of Wichita Falls v. Pearce*, 33 S.W.3d 415 (Tex. App. – Fort Worth 2000, no pet.); *City of Houston v. Savely*, 708 S.W.2d 879 (Tex. App. – Houston [1st Dist] 1986, writ ref'd n.r.e.), *cert denied*, 482 U.S. 928, 107 S.Ct. 3212, 96 L.Ed.2d 698 (1987); *May v. City of McKinney*, 479 S.W.2d 114 (Tex. Civ. App. – Dallas 1972, writ ref'd n.r.e.); *City of Houston v. Harris County Eastex Oaks Water & Sewer Dist.*, 438 S.W.2d 941 (Tex. Civ. App. – Houston [1st Dist.] 1969, writ ref'd n.r.e.); and *Lefler v. City of Dallas*, 177 S.W.2d 231 (Tex. Civ. App. – Dallas 1943, no writ).

B. Limitations on Challenges. Two provisions in the Local Government Code contain limitation provisions applicable to challenges to an annexation. Section 43.901 provides that an ordinance defining the boundaries of or annexing area to a municipality is conclusively presumed to have been adopted with the consent of all appropriate persons, except another municipality, if (1) two years have expired since the date of adoption of the ordinance, and (2) an action to annul or review the ordinance has not been initiated within that period.

Section 51.003 provides that a governmental act or proceeding is conclusively presumed, as of the date it occurred, to be valid and to have occurred in accordance with all applicable statutes and ordinances if (1) the third anniversary of the effective date of the act or proceeding has expired, and (2) a lawsuit to annul or invalidate the act or proceeding has not been filed on or before such date. The provisions of this section do not apply to (1) an act or proceeding that was void at the time it occurred, or (2) an annexation of territory within the boundaries or ETJ of another municipality that occurred without the consent of the other municipality.

C. Enforcement of a Service Plan. There are several remedies available to the residents and landowners of an annexed area if a municipality fails or refuses to provide services, or cause services to be provided, in accordance with the municipal service plan approved for the area. Under Section 43.056(l), a person residing or owning land in an annexed area of a municipality with a population of less than 1.6 million may enforce a service plan for such area by applying for a writ of mandamus. Such proceeding must be filed no later than the second anniversary of the date the person knew or should have known that the municipality was not complying with the plan. The municipality has the burden of proving that the services have been provided in accordance with the service plan in question. If the court issues a writ, the court:

1. must provide the municipality the option of disannexing the area within a reasonable period specified by the court;

2. may require the municipality to comply with the service plan in question before a reasonable date specified by the court if the municipality does not disannex the area within the period prescribed by the court;

3. may require the municipality to refund to the landowners of the annexed area money collected by the municipality from those landowners for services to the area that were not provided;

4. may assess a civil penalty against the municipality, to be paid to the state in an amount as justice may require, for the period in which the municipality is not in compliance with the service plan;

5. may require the parties to participate in mediation; and

6. may require the municipality to pay the person's costs and reasonable attorney's fees in bringing the action for the writ.

A person residing or owning land in an annexed area by a municipality with a population of 1.6 million or more may enforce a service plan by petitioning the municipality for a change in policy or procedures to ensure compliance with the service plan. If the municipality fails to take action with regard to the petition, the petitioner has the right to request arbitration to enforce the service plan. Section 43.056(l) and Section 43.0565. The procedures for appointment of an arbitrator and the conduct of the arbitration proceedings are the same as those required under a Section 43.0564 arbitration regarding a municipal service plan. In these proceedings, the municipality has the burden of proving that it is in compliance with the service plan. If the arbitrator finds that the municipality has not complied with the requirements of the service plan:

"(1) the municipality may disannex the area before the 31st day after the date the municipality receives a copy of the arbitrator's decision; and

(2) the arbitrator may:

(A) require the municipality to comply with the service plan in question before a reasonable date specified by the arbitrator if the municipality does not disannex the area;

(B) require the municipality to refund to the landowners of the annexed area money collected by the municipality from those landowners for services to the area that were not provided; and

(C) require the municipality to pay the costs of arbitration, including the reasonable attorney's fees and arbitration costs of the person requesting arbitration." Section 43.0565(d)

If the arbitrator finds that the municipality has complied with the service plan, he may require the person who requested arbitration to pay all or part of the cost of the arbitration, including the reasonable attorney's fees of the municipality. Section 43.0565(e).

Section 43.141 provides an alternative procedure if a municipality fails to provide services to an annexed area in accordance with an approved service plan. A majority of the qualified voters of an annexed area may petition the governing body of the municipality to disannex the area. The petition for disannexation must:

1. be written;

2. request the disannexation;

3. be signed in ink or indelible pencil by the appropriate voters;

4. be signed by each voter as that person's name appears on the most recent official list of registered voters;

5. 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;

6. describe the area to be disannexed and have a plat or other likeness of the area attached; and

7. be presented to the City Secretary of the municipality.

Before the petition is circulated among the voters, notice of the petition 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 of general circulation serving the area before the 15th day before the date the petition is first circulated.

If the governing body fails or refuses to disannex the area within 60 days after the date of receipt of the petition, any one or more of the petitioners may bring an action in district court to request that the area be disannexed. The district court shall enter an order disannexing the area if

the court finds that a valid petition was filed with the municipality, and that the municipality failed to perform its obligations in accordance with the service plan or failed to perform in good faith.