



# CITY COUNCIL AGENDA

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NOTICE IS GIVEN THAT THE CITY COUNCIL OF THE CITY OF LAMESA, TEXAS, WILL MEET IN A SPECIAL CALLED MEETING AT 5:30 P.M. ON TUESDAY, NOVEMBER 22, 2016, 601 SOUTH FIRST STREET, FOR THE PURPOSE OF CONSIDERING AND TAKING OFFICIAL ACTION ON THE FOLLOWING ITEMS:

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1. **CALL TO ORDER:**
2. **INVOCATION:**
3. **CONSENT AGENDA:** All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda. Information concerning consent agenda items is available for public review.
  - a. **APPROVAL OF THE MINUTES:** Approval of the minutes of the council meeting held on November 15, 2016.
4. **AWARD EMPLOYEE HEALTH INSURANCE:** Discuss and consider approving the award of FY 2016/2017 health insurance bid as recommended by Cris Norris, City's Health Insurance consultant.
5. **CALL FOR BIDS FOR ONE-TIME SALE OF CALICHE FROM LANDFILL:** Consider approval of a call for bids for one-time sale of 60,000 cubic yards caliche from City landfill.
6. **DISCUSSION OF USE OF EXTRATERRITORIAL JURISDICTION BY THE CITY OF LAMESA AND THE EXTENT OF USE:** Discuss the use of extraterritorial-jurisdiction and the extent of use.
7. **CITY MANAGER REPORT:** City Manager to report on current activities and answer questions from the City Council.
  - a. City Hall Closed for Thanksgiving – November 24 & 25, 2016
  - b. City Hall Christmas Open House – December 9, 2016 from 11 a.m. to 4 p.m.
  - c. City Hall Closed for Christmas – December 25 & 26, 2016 (holiday falls on weekend, Monday closed)
  - d. City Hall Closed for New Year's Day – January 2, 2017 (holiday falls on weekend, Monday closed)
8. **EXECUTIVE SESSION:** Council to consider convening into closed executive session under Sec. 551.074, Texas Government Code: "Personnel Matters; CLOSED MEETING. (a) This chapter does not require a governmental body to conduct an open meeting: (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee."
  - a. City Manager Evaluation

**9. OPEN SESSION:** Reconvene into open session to consider and discuss taking action regarding items discussed in Closed Session.

**10.ADJOURNMENT:** *The next regularly scheduled meetings of the City Council of the City of Lamesa will be December 20, 2016 at 5:30 P.M.*




## Open Meetings Information



### CLOSED MEETINGS

The City Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

### PUBLIC PARTICIPATION

 The meeting will be held pursuant to the provisions of the Texas Open Meetings Act (Govt. Code, Chapter 551). Discussion and actions are limited to the agenda items listed above. Persons desiring to address the City Council or express their opinion about a particular item on this agenda should notify the City Secretary before the meeting. Persons desiring to present other business or discuss matters not on this agenda should submit a request in writing to the City Secretary by the end of business hours on the Wednesday before the next meeting in order to be considered for inclusion on that agenda.

### MEETING ACCESSIBILITY

Upon request, auxiliary aids and services will be provided to an individual with a disability in order to allow them to effectively participate in the city council meeting. Those requesting auxiliary aids or services should notify the contact person listed below at least twenty-four hours prior to the meeting by mail, telephone or RELAY Texas (1-800-735-2989)

**Contact: Norma Garcia at 806-872-4322**

✉ 601 South First Street, Lamesa, Texas 79331

☎ **Telephone - (806) 872-4322**

☎ **Fax - (806) 872-4338**

### CERTIFICATION OF NOTICE



I certify this agenda was posted at the City Hall, 601 South First Street, Lamesa, Texas at **4:45 p.m., November 18, 2016** in accordance with Chapter 551.041 of the Government Code.

Norma Garcia, City Secretary

# **City Council Agenda**

## **City of Lamesa, Texas**

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEMS: 1 & 2**

1. **CALL TO ORDER:** *Announcement by the Mayor.* "This meeting is being held in accordance with the provisions of the Texas Open Meetings Act (Govt. Code, Chapter 551). Discussion and actions are limited to the agenda items as posted. Persons desiring to address the City Council or express their opinion about a particular item on this agenda should complete a request at this time. Persons desiring to present other business or discuss matters not on this agenda should submit a request in writing to the City Secretary in order to be considered for inclusion on the agenda of the next meeting. A quorum being present as evidenced by the presence of \_\_\_\_ members of the City Council, this meeting is hereby called to order."

The following members are present:

JOSH STEVENS	Mayor
BRANT STEWART	Council Member – District 1
MARIE A. BRIENO	Council Member – District 2
FABIAN RUBIO	Council Member – District 3
BOBBY G. GONZALES	Council Member - District 4
FRED VERA	Council Member – District 5
CHANCE BRITT	Mayor Pro-tem/Council Member – District 6

City Staff members present at the meeting:

SHAWNA D. BURKHART	City Manager
NORMA GARCIA	City Secretary
RUSSELL CASSELBERRY	Attorney

Members of the press present at the meeting:

Members of the public present at the meeting:

2. **INVOCATION:**  
**AND PLEDGE OF ALLEGIANCE.**



# **City Council Agenda**

## **City of Lamesa, Texas**

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 3**

**SUBJECT: CONSENT AGENDA ITEMS**  
**PROCEEDING: Approval**  
**SUBMITTED BY: City Staff**

### **SUMMARY STATEMENT**

All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda. Information concerning consent agenda items is available for public review.

- a. **APPROVAL OF THE MINUTES:** Approval of the minutes of the council meeting held on November 15, 2016.

### **COUNCIL ACTION**

**DISCUSSION** \_\_\_\_\_

Motion by Council Member \_\_\_\_\_ to approve Item 3a. Motion seconded by Council Member \_\_\_\_\_ and upon being put to a vote the motion \_\_\_\_\_.

**VOTING:** "AYE" \_\_\_\_\_ "NAY" \_\_\_\_\_ "ABSTAIN" \_\_\_\_\_

### **CITY MANAGER'S MEMORANDUM**

These items are considered non-controversial but do require formal council approval. If a council member objects to a consent item, it is removed from the list and separate action is taken on the item(s). If a council member questions a consent item, but not so strongly as to require that it be removed from the list, his/her "no" vote or abstention can be entered in the minutes when the consent vote is taken. **Recommend approval.**

THE STATE OF TEXAS }  
COUNTY OF DAWSON }  
CITY OF LAMESA }

**MINUTES OF THE CITY COUNCIL REGULARLY CALLED MEETING:  
NOVEMBER 15, 2016**

On this the 15<sup>TH</sup> day of November, 2016, at 5:30 P.M. there came on and was held a regularly called meeting of the City Council of the City of Lamesa, Dawson County, Texas. Notice of such meeting having been posted at the City Hall at 601 South First Street in the City of Lamesa, Texas in accordance with the provisions of the Texas Open Meetings Act (Texas Govt. Code, Chapter 551). The following items were listed on the notice and the following proceedings were had, viz.:

CALL TO ORDER: Mayor Pro-Tem Britt announced that the meeting was being held in accordance with the provisions of the Texas Open Meetings Act (Texas Govt. Code, Chapter 551), and that discussion and actions are limited to the agenda items as posted. A quorum being present as evidenced by the presence 7 the Council Members were present:

JOSH STEVENS	MAYOR
MARIE BRISENO	COUNCIL MEMBER – DISTRICT 2
BRANT STEWART	COUNCIL MEMBER – DISTRICT 1
BOBBY G. GONZALES	COUNCIL MEMBER – DISTRICT 4
FABIAN RUBIO	COUNCIL MEMBER – DISTRICT 3
FRED VERA	COUNCIL MEMBER – DISTRICT 5
CHANCE BRITT	MAYOR PRO-TEM/COUNCIL DISTRICT 6

**City staff members present at the meeting:**

SHAWNA D. BURKHART	CITY MANAGER
NORMA GARCIA	CITY SECRETARY
RUSSELL CASSELBERRY	CITY ATTORNEY

**Members of the public present at the meeting:**

Herrel Hallmark	Nathan Tafoya	Sandy Trevino	Dionicio Garza
Robert Ramirez	Irma Ramirez	Wayne Chapman	Larry Duyck
Chief Alwan	Judge Leticia Dimas		

Invocation was given by Council Member Bobby Gonzales.



**CONSENT AGENDA:** All consent agenda items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council Member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda. Information concerning the consent agenda items is available for public review.

- a. **APPROVAL OF THE MINUTES:** Approval of the minutes of the council meeting held on October 18, 2016.
- b. **BILLS FOR OCTOBER 2016:** Approval of the bills paid by the City of Lamesa for the month of October 2016.

**c. RE-APPOINTMENTS TO BOARDS:**

- **RE-APPOINTMENT – LAMESA ECONOMIC DEVELOPMENT CORPORATION MEMBER:** Consider re-appointing Bryan Nowlin to the Lamesa Economic Development Corporation, for a two (2) year term ending on December 2018. *(Mr. Nowlin's term expires December 2016. Mr. Nowlin has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA ECONOMIC DEVELOPMENT CORPORATION MEMBER:** Consider re-appointing Sammy Stevens to the Lamesa Economic Development Corporation, for a two (2) year term ending on December 2018. *(Mr. Stevens term expires December 2016. Mr. Stevens has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA ECONOMIC ALLIANCE PROJECT MEMBER:** Consider re-appointing Bryan Nowlin to the Lamesa Economic Alliance Project for a two (2) year term ending on December 2018. *(Mr. Nowlin's term expires December 2016. Mr. Nowlin has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA ECONOMIC ALLIANCE PROJECT MEMBER:** Consider re-appointing Sammy Stevens to the Lamesa Economic Alliance Project, for a two (2) year term ending on December 2018. *(Mr. Stevens term expires December 2016. Mr. Stevens has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA ECONOMIC ALLIANCE PROJECT MEMBER:** Consider re-appointing Bridgette Krohn to the Lamesa Economic Alliance Project, for a two (2) year term ending on December 2018. *(Ms. Krohn's term expires December 2016. Ms. Krohn has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA MUNICIPAL GOLF ADVISORY BOARD MEMBER:** Consider re-appointing Johnny Sauseda to the Lamesa Municipal Golf Advisory Board, for a four (4) year term ending on December 2020. *(Mr. Sauseda has been recommended by the Lamesa Municipal Golf Advisory Board to be re-appointed to the board. Mr. Sauseda's term expires December 2016. Mr. Sauseda has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA MUNICIPAL GOLF ADVISORY BOARD MEMBER:** Consider re-appointing Chris Hatchett to the Lamesa Municipal Golf Advisory Board, for a four (4) year term ending on December 2020. *(Mr. Hatchett has been recommended by the Lamesa Municipal Golf Advisory Board to be re-appointed to the board. Mr. Hatchett's term expires December 2016. Mr. Hatchett has agreed to serve.)*
- **RE-APPOINTMENT – PLUMBING APPEALS AND ADVISORY BOARD MEMBER:** Consider re-appointing Paul Sanchez to the Plumbing Board, for a four (4) year term ending on December 2020. *(Mr. Sanchez's term expired December 2016. Mr. Sanchez has agreed to serve.)*

- **RE-APPOINTMENT – PLUMBING APPEALS AND ADVISORY BOARD MEMBER:** Consider re-appointing Ronnie Payton to the Plumbing Board, for a four (4) year term ending on December 2020. *(Mr. Payton's term expired December 2016. Mr. Payton has agreed to serve.)*
- **RE-APPOINTMENT – PLUMBING APPEALS AND ADVISORY BOARD MEMBER:** Consider re-appointing Mark Hughes to the Plumbing Board, for a four (4) year term ending on December 2020. *(Mr. Hughes term expired December 2016. Mr. Hughes has agreed to serve.)*
- **RE-APPOINTMENT – ELECTRICAL BOARD MEMBER:** Consider re-appointing Mike Johnson to the Electrical Board, for a two (2) year term ending on December 2018. *(Mr. Johnson's term expired December 2016. Mr. Johnson has agreed to serve.)*
- **RE-APPOINTMENT – ELECTRICAL BOARD MEMBER:** Consider re-appointing Hector Cantu to the Electrical Board, for a two (2) year term ending on December 2018. *(Mr. Cantu's term expired December 2016. Mr. Cantu has agreed to serve.)*
- **RE-APPOINTMENT – ELECTRICAL BOARD MEMBER:** Consider re-appointing Ken Wiley to the Electrical Board, for a two (2) year term ending on December 2018. *(Mr. Wiley's term expired December 2016. Mr. Wiley has agreed to serve.)*
- **RE-APPOINTMENT – ELECTRICAL BOARD MEMBER:** Consider re-appointing Robert Borella to the Electrical Board, for a two (2) year term ending on December 2018. *(Mr. Borella's term expired December 2016. Mr. Borella has agreed to serve.)*
- **RE-APPOINTMENT – ELECTRICAL BOARD MEMBER:** Consider re-appointing Emial Douglas to the Electrical Board, for a two (2) year term ending on December 2018. *(Mr. Douglas term expired December 2016. Mr. Douglas has agreed to serve.)*
- **RE-APPOINTMENT – ZONING BOARD OF ADJUSTMENT BOARD MEMBER:** Consider re-appointing Gary Culp to the Zoning Board of Adjustment, for a two (2) year term ending on December 2018. *(Mr. Culp's term expired December 2016. Mr. Culp has agreed to serve.)*
- **RE-APPOINTMENT – ZONING BOARD OF ADJUSTMENT BOARD MEMBER:** Consider re-appointing Jenkin Ortiz to the Zoning Board of Adjustment, for a two (2) year term ending on December 2018. *(Mr. Ortiz term expired December 2016. Mr. Ortiz has agreed to serve.)*
- **RE-APPOINTMENT – ZONING BOARD OF ADJUSTMENT BOARD MEMBER:** Consider re-appointing Bob Henderson to the Zoning Board of Adjustment, for a two (2) year term ending on December 2018. *(Mr. Henderson's term expired December 2016. Mr. Henderson has agreed to serve.)*
- **RE-APPOINTMENT – ZONING BOARD OF ADJUSTMENT BOARD MEMBER:** Consider re-appointing Ray Stephens to the Zoning Board of Adjustment, for a two (2) year term ending on December 2018. *(Mr. Stephens' term expired December 2016. Mr. Stephens has agreed to serve.)*
- **RE-APPOINTMENT – ZONING BOARD OF ADJUSTMENT ALTERNATE BOARD MEMBER:** Consider re-appointing Richard Leonard as an alternate member to the Zoning Board of Adjustment, for a two (2) year term ending on December 2018. *(Mr. Leonard's term expired December 2016. Mr. Leonard has agreed to serve.)*
- **RE-APPOINTMENT – ZONING BOARD OF ADJUSTMENT ALTERNATE BOARD MEMBER:** Consider re-appointing John Hegi as an alternate member to the Zoning Board of Adjustment, for a two (2) year term ending on December 2018. *(Mr. Hegi's term expired December 2016. Mr. Hegi has agreed to serve.)*



- **RE-APPOINTMENT – AIRPORT BOARD MEMBER:** Consider re-appointing Don Chiles to the Airport Board, for a three (3) year term ending on December 2019. *(Mr. Chiles term expired December 2016. Mr. Chiles has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA-DAWSON COUNTY MUSEUM ASSOCIATION MEMBER:** Consider re-appointing Judy Beam to the Lamesa-Dawson County Museum Association Board, for a three (3) year term ending on December 2019. *(Ms. Beam's term expires December 2016. Ms. Beam has agreed to serve.)*
- **RE-APPOINTMENT – LAMESA-DAWSON COUNTY MUSEUM ASSOCIATION MEMBER:** Consider re-appointing Ann Riddle to the Lamesa-Dawson County Museum Association Board, for a three (3) year term ending on December 2019. *(Ms. Riddle's term expires December 2016. Ms. Riddle has agreed to serve.)*

Motion by Council Member Vera to approve Item 3a, b, and c. Motion seconded by Council Member Stewart and upon being put to a vote the motion passed.

VOTING:                      "AYE" 7                      "NAY" 0                      "ABSTAIN" 0

**AWARD EMPLOYEE HEALTH INSURANCE:** Discuss and consider approving the award of FY 2016/2017 health insurance bid as recommended by Cris Norris, City's Health Insurance consultant.

No discussion or action taken on this item.

**OPEN REQUEST FOR QUALIFICATION ON ADMINISTRATIVE SERVICES FOR 2016 CDBG GRANT:** Open Request for Qualification for Administrative Services for 2016 CDBG Grant – 2,830 linear feet of water improvements on N. 3<sup>rd</sup> St. from N. Hartford Avenue to Boston Avenue, on N. 1<sup>st</sup> St. from a point between Canyon Avenue and Boston Avenue to Detroit Avenue, and on Detroit Ave. from point between Detroit Avenue and Elgin Avenue and direct City staff and Administrative Committee to score submittals for award on December 20, 2016 City Council meeting.

NAME OF ENTITY	CITY AMOUNT
HOWCO	35,000

No action taken.

**SERVICE AGREEMENT FOR SCHOOL SECURITY:** Consider passing a resolution approving a service agreement for school security between the City of Lamesa and the Lamesa Independent School District.

VOTING: "AYE" 7 "NAY" 0 "ABSTAIN" 0

**FINANCIAL REPORT:** Finance Director to report on the city's finances.

- a. City Hall Closed for Thanksgiving – November 24 & 25, 2016
- b. City Hall Christmas Open House – December 9, 2016 from 11 a.m. to 4 p.m.
- c. City Hall Closed for Christmas – December 25 & 26, 2016 (holiday falls on weekend, Monday closed)
- d. City Hall Closed for New Year's Day – January 2, 2017 (holiday falls on weekend, Monday closed)

- a. Implementation of new Fair Labor Standards Act ruling (effective December 1, 2016) resulting in compensation changes for City Secretary & City Housing Authority Director/Purchasing Agent.
- b. City Manager Evaluation

Motion by Council Member Stewart to consider taking action to the Fair Labor Standards Act. Motion seconded by Council Member Rubio and upon being put to a vote the motion passed.

VOTING: "AYE" 7 "NAY" 0 "ABSTAIN" 0

**ADJOURNMENT:** The next regularly scheduled meetings of the City Council of the City of Lamesa will be December 20, 2016 at 5:30 P.M. There being no other business, the meeting was adjourned at 8:03 P.M.

Pursuant to the provisions of the Texas Open Meetings Act, the City Council certifies that the items above are a full record of the subject matter of each deliberation and indicates each vote, order, decision or other action taken by the City Council of the City of Lamesa, Texas at the meeting held on the date indicated above. Ratified and approved at the regularly called meeting of the City Council of the City of Lamesa, Texas held on November 15, 2016.

ATTEST:

APPROVED:

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Norma Garcia  
City Secretary

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Josh Stevens  
Mayor

# **City Council Agenda**

*City of Lamesa, Texas*

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 4**

**SUBJECT: AWARD EMPLOYEE HEALTH INSURANCE**  
**PROCEEDING: Award Bid**  
**SUBMITTED BY: City Staff**

## **SUMMARY STATEMENT**

Discuss and consider approving the award of FY 2016/2017 health insurance bid as recommended by Cris Norris, City's Health Insurance consultant.

## **COUNCIL ACTION**

**DISCUSSION** \_\_\_\_\_

Motion by Council Member \_\_\_\_\_ to approve the FY 2016/2017 City's Health Insurance bid to \_\_\_\_\_. Motion seconded by Council Member \_\_\_\_\_ and upon being put to a vote the motion \_\_\_\_\_.

**VOTING:** "AYE" \_\_\_\_\_ "NAY" \_\_\_\_\_ "ABSTAIN" \_\_\_\_\_

## **CITY MANAGER'S MEMORANDUM**

**Recommend approval.**



**CITY OF LAMESA**  
Health Plan Renewal for 2017

**\$40,000 Specific**

Stop Loss Carrier	Contract Basis	Annualized Fixed Costs	Annual Aggregate	Maximum Annualized Cost	Maximum Liability with laser
<b>Unlimited Plan Benefit Maximum</b>					
Caprock--Current(American National)\$100,000 laser	24/12	\$226,482.00	\$390,686.00	\$617,168.00	\$717,168.00
Caprock--Renewal(American National)no laser--with current benefits	24/12	\$392,437.00	\$566,275.00	\$958,712.00	\$958,712.00
IMS--(Gerber Life)Referenced Based Pricing--current benefits	15/12	\$252,297.00	\$539,782.00	\$792,079.00	\$792,079.00
Caprock--Renewal(American Fidelity) Referenced Based Pricing	24/12	\$251,256.00	\$529,796.00	\$781,052.00	\$781,052.00
BCBSTX Fully Funded Plan#MMH1	12 month	\$622,464.00	N/A	\$622,464.00	\$622,464.00

City Of Lamesa has separate Transplant Policy that is included in the above numbers.  
**Administration fees are included in Fixed Cost and include Medical, Dental, COBRA/HIPAA PPO/Precent are also included in the fixed but not part of Caprock's fees this is payable to Network Provider and UR Vendor**  
**Carrier Contingencies:**  
**All carriers : Updated disclosure reports and large claimant information through the effective date**  
**Review of updated case notes on large claimants information, to include information on the laser specific ded.**  
**Updated Specific and Aggregate reports through November including first month's premium.**

# ***City Council Agenda***

***City of Lamesa, Texas***

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 5**

**SUBJECT: CALL FOR BIDS FOR ONE-TIME SALE OF CALICHE FROM  
LANDFILL**

**SUBMITTED BY: City Staff**

**AUTHORITY:**

## **SUMMARY STATEMENT**

Consider approval of a call for bids for one-time sale of 60,000 cubic yards caliche from City landfill.

## **COUNCIL ACTION**

**DISCUSSION:** \_\_\_\_\_

Motion by Council Member \_\_\_\_\_ to the approval of a call for bids for one-time sale of 60,000 cubic yards caliche from City landfill. Motion seconded by Council Member \_\_\_\_\_ and upon being put to a vote the motion \_\_\_\_\_.

**VOTING:** "AYE" \_\_\_\_\_ "NAY" \_\_\_\_\_ "ABSTAIN" \_\_\_\_\_

## **CITY MANAGER'S MEMORANDUM**

Request advertising for bids on sale of caliche from City landfill.



## **CITY OF LAMESA NOTICE TO BIDDERS**

The City of Lamesa is soliciting sealed bid proposals for sale of 60,000 cubic yards of caliche, including excavation and grading to City Engineer's specifications (see attached specifications). Bid opening will be at Lamesa City Hall at 5:30 p.m. on Tuesday, December 20, 2016.

Minimum bid threshold is set at \$1.50 per cubic yard. Successful bidder is required to provide the following prior to initiation of project. These items include, but are not limited to:

- Copy of Bidder's liability insurance policy with a minimum limit of \$1,000,000, to include City of Lamesa as an additional insured.
- Proof of Bidder's Workers Compensation insurance coverage.
- Fencing of work site and construction entrance as approved by Public Works Director and City Engineer.
- Use of Bidder's equipment and manpower for all of the proposed project.

**Note:**

- **The City of Lamesa provides no guarantees on the quality or grade of caliche.**

Sealed proposals addressed to the Mayor and City Council of the City of Lamesa, Texas will be received at the office of Shawna Burkhart, City Manager, 601 South 1<sup>st</sup> Street, Lamesa, Texas 79331 until **4:00 p.m., Monday, December 19, 2016.**

The owner reserves the right to reject any and all Bids and to waive formalities. In case of ambiguity or lack of clearness in stating the prices in the Bid, the Owner

reserves the right to consider the most advantageous construction thereof, or to reject the Bid.

The Bids will be opened at **5:30 p.m., Tuesday, December 20, 2016** and read in open meeting. The City Council reserves the right to accept the bid most advantageous to the City.

ATTEST:  
Norma Garcia  
City Secretary

SIGNED:  
Josh Stevens  
Mayor

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*Proposed Publish Dates:*  
*November 27, 2016*  
*December 4, 2016*





ISSUED FOR BIDDING  
PURPOSES ONLY

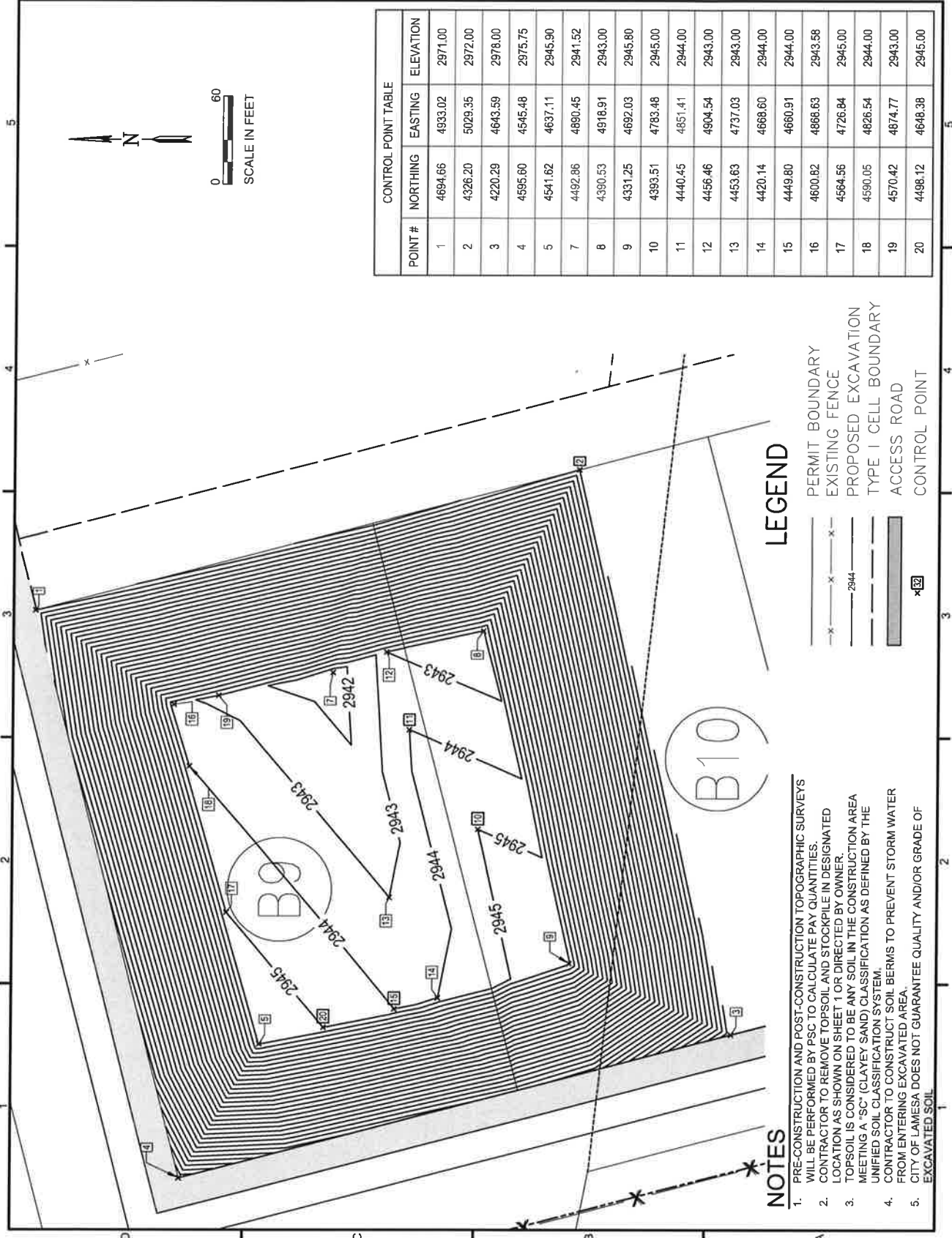
**CITY OF LAMESA  
MUNICIPAL SOLID  
WASTE LANDFILL  
MSW NO. 517A**

601 S. 1ST. STREET  
LAMESA, TEXAS 78301

REV. JAN

**TYPE IV CELL  
GRADING  
ELEVATIONS**

**SHEET 2**





# ***City Council Agenda***

## ***City of Lamesa, Texas***

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 6**

**SUBJECT: DISCUSSION OF USE OF EXTRATERRITORIAL  
JURISDICTION BY THE CITY OF LAMESA AND THE EXTENT  
OF USE**

**SUBMITTED BY: City Staff**

**AUTHORITY: Texas Local Government Code, Chapters 42 & 43**

### **SUMMARY STATEMENT**

Discuss the use of extraterritorial-jurisdiction and the extent of use.

### **COUNCIL ACTION**

**DISCUSSION:** \_\_\_\_\_



# MUNICIPAL REGULATION OF THE ETJ

Terrence S. Welch & Robert F. Brown  
Brown & Hofmeister, L.L.P.  
740 E. Campbell Road, Suite 800  
Richardson, Texas 75081  
(214) 747-6100  
(214) 747-6111 (Facsimile)  
[www.bhlaw.net](http://www.bhlaw.net)

A problematic issue for many municipalities is the extent to which a city may regulate the extraterritorial jurisdiction (ETJ) which (usually) surrounds it. While issues relating to the ETJ generally involve annexation disputes, the ETJ often poses land use problems for cities throughout Texas. The purpose of this paper is to address in a general manner annexation and the ETJ, and in particular, land use and related municipal regulations in the ETJ.

## **I. Introduction**

Prior to 1963, a Texas municipality could annex territory up to the corporate boundaries of another municipality. Since courts adhered to the “first in time, first in right” rule that the first to commence annexation or incorporation proceedings was entitled to complete and relate the whole action back to the date of the commencement of the actions, contests often resulted between an area attempting to incorporate and a city racing to annex that area prior to the initiation of incorporation proceedings. The Legislature, recognizing the havoc that was being created by such races, enacted the Municipal Annexation Act, Tex.Rev.Civ.Stat.Ann. art. 970a, in 1963. In addition to statutorily regulating annexation activities, the Municipal Annexation Act created the concept of extraterritorial jurisdiction. Since that time, disputes between municipalities and landowners regarding annexation and the ability of cities to regulate certain activities within the ETJ have become commonplace.

These disputes have churned significant activity in the Texas Legislature. In the 75th Session of the Texas Legislature, approximately 70 annexation or annexation-related bills were introduced. While no significant changes in the state’s annexation scheme were accomplished through the handful of bills that were passed in the 75th Legislative Session, the 76th Legislature dramatically altered the ability of municipalities to annex property. Senate Bill No. 89, which became effective September 1, 1999, has completely changed the annexation landscape.

## **II. The Municipal Annexation Act and the ETJ**

Chapters 42 and 43 of the Texas Local Government Code comprise the current version of the Municipal Annexation Act, originally enacted in 1963, which governs the ability of municipalities to annex property and which created the ETJ concept.<sup>1</sup> The policy purpose underlying 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.

Extraterritorial jurisdiction by statute is defined as “the unincorporated area that is contiguous to the corporate boundaries of the municipality. . . .”<sup>2</sup> The geographical extent of any municipality’s extraterritorial jurisdiction is contingent upon the number of inhabitants of the municipality:

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<sup>1</sup> *City of Bridge City v. City of Port Arthur*, 792 S.W.2d 217, 230 (Tex.App.—Beaumont 1990, writ denied).

<sup>2</sup> Tex. Local Gov’t Code § 42.021.

<u>Number of Inhabitants</u>	<u>Extent of Extraterritorial Jurisdiction</u>
Fewer than 5,000	One-half Mile
5,000—24,999	One Mile
25,000—49,999	Two Miles
50,000—99,999	Three and one-half Miles
100,000 and over	Five Miles <sup>3</sup>

The operative language in Section 42.021 is “number of inhabitants” rather than “population”—a distinction of significance in Texas state law when viewed with reference to Chapter 311 of the Texas Government Code, the Code Construction Act. According to Section 311.002 of the Government Code, the Code Construction Act applies to any code enacted by the 60th or subsequent Legislature. The Local Government Code was enacted by the 71st Legislature in 1989. According to Section 311.005(3) of the Government Code, “population” means “the population shown by the most recent federal decennial census.” Therefore, when any state statute employs the term “population,” that refers to the population as of the most recent decennial census—currently, the 2000 federal decennial census. In contrast, the extent of a city’s extraterritorial jurisdiction is based upon the number of inhabitants (as determined by the city), not the city’s population according to the most recent decennial census. Further, the Attorney General’s Office determined in Letter Opinion No. LO94-033 (1994) that “a municipality may choose the method by which it will ascertain the boundaries of its extraterritorial jurisdiction. . . .” That opinion was in response to the question whether a city “may measure its extraterritorial jurisdiction by drawing a radius around the municipality on a map, or whether the municipality must ‘go into the field, . . . physically [measuring] the . . . radius.’” *Id.* Thus, a municipality may by ordinance or resolution determine the number of inhabitants within its corporate limits and determine how it will measure the extent of its ETJ.

#### **A. Mapping Municipal Boundaries and the ETJ**

As a threshold matter, before a municipality may consider the annexation of property into the city, it is imperative that the city accurately determine its corporate boundaries and the limits of its ETJ. Section 41.001 of the Texas Local Government Code requires that each city maintain an official map of its city limits which, after each annexation, is updated to show the newly annexed area, the date of annexation, the ordinance number, and a reference to the minutes or ordinance records in which the ordinance is recorded. Further, Section 41.001 of the Local Government Code requires that if a municipality’s ETJ is expanded or reduced, the official map must be revised to indicate the change in the city’s ETJ:

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<sup>3</sup> *Id.*, § 42.021.

**§ 41.001 Map of Municipal Boundaries and Extraterritorial Jurisdiction**

(a) Each municipality shall prepare a map that shows the boundaries of the municipality and of its extraterritorial jurisdiction. A copy of the map shall be kept in the office of the secretary or clerk of the municipality. If the municipality has a municipal engineer, a copy of the map shall also be kept in the office of the engineer.

(b) If the municipality annexes territory, the map shall be immediately corrected to include the annexed territory. The map shall be annotated to indicate:

- (1) the date of annexation;
- (2) the number of the annexation ordinance, if any; and
- (3) a reference to the minutes or municipal ordinance records in which the ordinance is recorded in full.

(c) If the municipality's extraterritorial jurisdiction is expanded or reduced, the map shall be immediately corrected to indicate the change in the municipality's extraterritorial jurisdiction. The map shall be annotated to indicate:

- (1) the date the municipality's extraterritorial jurisdiction was changed;
- (2) the number of the ordinance or resolution, if any, by which the change was made; and
- (3) a reference to the minutes or municipal ordinance or resolution records in which the ordinance or resolution is recorded in full.

In a perfect world, all municipal incorporations would result in a survey that would be utilized in creating an official city map, which city map would have been checked for completeness and closure and recorded in the minutes of the municipality and the real property records of the county or counties in which the city lies. Additionally, in a perfect world, all annexations would have been precisely determined with field notes or other legal descriptions that would allow the official city map to be amended to reflect the new corporate city limits, as well as the extent of the city's newly expanded ETJ. Of course, very few cities operate in a perfect world and, as a result, many times uncertainty may exist as to the exact location of municipal boundaries and the exact extent of a municipality's ETJ.

**B. Reduction of the ETJ**

Section 42.023 of the Texas Local Government Code states that:

[t]he extraterritorial jurisdiction of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution, except in cases of judicial apportionment of overlapping extraterritorial jurisdiction under Section 42.901.

A city created out of the relinquishment of another city's ETJ had no ETJ of its own where its corporate boundaries adjoined the other city's ETJ.<sup>4</sup> In *City of Pasadena v. City of Houston*,<sup>5</sup> the Texas Supreme Court held that where a Houston ordinance purporting to annex property (which the City of Pasadena had subsequently annexed by later ordinances) was not completed within ninety days of the passage of the Municipal Annexation Act, the Houston ordinance was void, notwithstanding that the agreed judgment reached between Houston and Pasadena before passage of the Act that gave Houston exclusive jurisdiction to annex the property. Further, Texas case law consistently has held that an ordinance that attempts to annex territory within the ETJ or municipal boundaries of another city is void.<sup>6</sup> Indeed, the attempted annexation of land within another municipality's ETJ is unlawful, void and of no effect *ab initio*.<sup>7</sup>

### C. Expansion of the ETJ

Section 42.022 of the Texas Local Government Code addresses the expansion of the ETJ. Specifically, it states:

- (a) When a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries.
- (b) The extraterritorial jurisdiction of a municipality may expand beyond the distance limitations imposed by Section 42.021 to include an area contiguous to the otherwise existing extraterritorial jurisdiction of the municipality if the owners of the area request the expansion.
- (c) The expansion of the extraterritorial jurisdiction of a municipality through annexation, request, or increase in the number of inhabitants may not include any area in the existing extraterritorial jurisdiction of another municipality.

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<sup>4</sup> *Bridge City*, 792 S.W.2d at 230.

<sup>5</sup> 442 S.W.2d 325, 329 (Tex. 1969).

<sup>6</sup> See *City of Waco v. City of McGregor*, 523 S.W.2d 649, 653 (Tex. 1975); *Village of Creedmoor v. Frost Nat'l Bank*, 808 S.W.2d 617, 620 (Tex.App.—Austin 1991, writ denied); *City of Bridge City*, 792 S.W.2d at 230; *Friendship Village v. State*, 738 S.W.2d 12, 14 (Tex.App.—Texarkana 1987, writ ref'd n.r.e.); *City of Houston v. Savely*, 708 S.W.2d 879, 887 (Tex.App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.), *cert. denied*, 482 U.S. 928 (1987); *City of West Orange v. City of Orange*, 598 S.W.2d 387, 390 (Tex.Civ.App.—Beaumont 1980), *rev'd on other grounds*, 613 S.W.2d 236 (Tex. 1981); *City of Duncanville v. City of Woodland Hills*, 484 S.W.2d 111, 113 (Tex.Civ.App.—Waco 1972, writ ref'd n.r.e.).

<sup>7</sup> See, e.g., *Village of Creedmoor*, 808 S.W.2d at 621.

Tex. Local Gov't Code § 42.022. Thus, a municipality's ETJ may expand by only one of three methods: annexation, landowner request and increase in the number of inhabitants. Absent the foregoing, there is no valid expansion of a municipality's ETJ.<sup>8</sup>

#### **D. Overlapping ETJs**

The only method by which one municipality may have its ETJ overlap another municipality's ETJ is the case where the ETJs overlapped as a consequence of the adoption of the Municipal Annexation Act on August 23, 1963. In such cases, according to Section 42.901 of the Texas Local Government Code, the two municipalities (or more, if applicable) (1) may enter into a written agreement delineating the extent of each municipality's ETJ; or (2) seek a judicial declaration apportioning each municipality's ETJ. Thus, there rarely are situations where ETJs truly overlap; rather, there often are disputes about the specific limits and/or locations of various ETJs and "who got there first."

### **III. Municipal Regulations in the ETJ**

As a general rule, a municipality's ordinances and other regulations are valid and enforceable only within the municipality's corporate limits; however, where there is an express grant of authority either by the Texas Constitution or statute to municipalities to enact and enforce ordinances and regulations outside the corporate limits of a municipality, municipalities consequently may do so.<sup>9</sup>

Texas municipalities possess the authority to regulate in their ETJs pursuant to a number of express provisions of the Texas Local Government Code. Areas of regulation and an explanation of those areas are as follows.

#### **A. Subdivision Regulations**

While Texas municipalities do not possess the statutory authority to zone property in their extraterritorial jurisdictions, Section 212.003 of the Texas Local Government Code provides that a subdivision ordinance is applicable to a municipality's extraterritorial jurisdiction *if, and only if*, the municipality specifically has extended its subdivision regulations to the

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<sup>8</sup> For a detailed discussion of the effect of annexation on extraterritorial jurisdiction in light of the 1999 amendments to the annexation statute, see Attorney General Opinion No. GA-0014 (January 22, 2003).

<sup>9</sup> See Op. Tex. Att'y Gen. LO97-055 (1997). In that opinion, the Attorney General's Office wrote as follows:

As a general rule, a city can exercise its powers only within the city's corporate limits unless power is expressly or impliedly extended by the Texas Constitution or by statute to apply to areas outside the limits. See *City of Austin v. Jamail*, 662 S.W.2d 779, 782 (Tex. App.—Austin 1983, writ dismissed w.o.j.); *City of West Lake Hills v. Westwood Legal Defense Fund*, 598 S.W.2d 681, 686 (Tex. Civ. App.—Waco 1980, no writ); *City of Sweetwater v. Hammer*, 259 S.W. 191, 195 (Tex. Civ. App.—Fort Worth 1923, writ dismissed); *Ex parte Ernest*, 136 S.W.2d 595, 597-98 (Tex. Crim. App. 1939); Attorney General Opinion JM-226 (1984) at 2. Extraterritorial power will be implied only when such power is reasonably incident to those powers expressly granted or is essential to the object and purposes of the city. *Jamail*, 662 S.W.2d at 782; *Westlake Hills*, 598 S.W.2d at 683. "[A]ny fair, reasonable, or substantial doubt as to the existence of a power will be resolved against the municipality." *Westlake Hills*, 598 S.W.2d at 683.



extraterritorial jurisdiction. Thus, subdivision regulations are *not* automatically applicable to a municipality's ETJ. Section 212.003 specifically provides as follows:

(a) The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 and other municipal ordinances relating to access to public roads. However, unless otherwise authorized by state law, in its extraterritorial jurisdiction a municipality shall not regulate:

(1) the use of any building or property for business, industrial, residential, or other purposes;

(2) the bulk, height, or number of buildings constructed on a particular tract of land;

(3) the size of a building that can be constructed on a particular tract of land, including without limitation any restriction on the ratio of building floor space to the land square footage; or

(4) the number of residential units that can be built per acre of land.

(b) A fine or criminal penalty prescribed by the ordinance does not apply to a violation in the extraterritorial jurisdiction.

(c) The municipality is entitled to appropriate injunctive relief in district court to enjoin a violation of municipal ordinances or codes applicable in the extraterritorial jurisdiction.

As noted earlier in this paper in the platting discussion, most Texas municipalities routinely extend the application of their subdivision regulations to their extraterritorial jurisdictions. The only case directly on point concluded that a municipality may require building permits for construction in its ETJ and enforce its construction-related ordinances in its ETJ.<sup>10</sup> Therefore, based upon the court's rationale in *City of Lucas*, a municipality (1) may enforce its subdivision ordinance in its ETJ, (2) may issue building permits for construction in its ETJ and further, (3) may enforce its construction-related ordinances (Uniform Building Code, Uniform Plumbing Code, Uniform Mechanical Code and Uniform Electrical Code) in its ETJ.

A municipality may regulate subdivisions and approve plats for tracts of land located outside its corporate limits and outside its extraterritorial jurisdiction *if* there is an interlocal agreement providing for such regulation and approval.<sup>11</sup> In the event a tract of land lies within the ETJ of more than one municipality, the municipality with the largest population has approval

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<sup>10</sup> See *City of Lucas v. North Texas Municipal Water Dist.*, 724 S.W.2d 811 (Tex. App.—Dallas 1986, writ ref'd n.r.e.).

<sup>11</sup> Tex. Local Gov't Code § 242.001(e).

responsibility.<sup>12</sup> Nevertheless, the portion of the tract that lies in the ETJ of the smaller municipality must comply with the subdivision and platting regulations of that municipality while the portion of the tract the lies in the ETJ of the larger municipality must comply with the subdivision and platting regulations of that municipality. Thus, plat approval is the responsibility of the larger municipality even though the larger municipality only applies its regulations to that portion of the tract in its ETJ.

### **B. Subdivisions, House Bill 1445 and the ETJ**

House Bill 1445, as it is commonly known, was adopted by the 2001 session of the Legislature and provided for an agreement between a county and a municipality to regulate a subdivision in the ETJ of a municipality. Now codified in Chapter 242 of the Texas Local Government Code, H.B. 1445 required that a city and county (except for counties over 1.9 million and border counties) shall enter into a written agreement that identifies the governmental entity authorized to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction.<sup>13</sup> For a municipality in existence on September 1, 2001, the municipality and county were required to enter into a written agreement on or before April 1, 2002.<sup>14</sup> For a municipality incorporated after September 1, 2001, the municipality and county shall enter into a written agreement no later than the 120th day after the date the municipality incorporates.<sup>15</sup>

Texas municipalities have four options under H.B. 1445: (1) the county will possess no authority over plats and all review will be done by the city; (2) the city possesses no authority over plats and all review will be done by the county; (3) the city and county will divide the ETJ geographically and each will delineate in which area it possesses authority over plats; and (4) the city and county jointly review plats under their respective authority, but there must be one filing fee, one office to file plats and one uniform and consistent set of plat regulations.

A municipality and a county may adopt the agreement by order, ordinance or resolution. A municipality must notify the county of any expansion or reduction in the municipality's extraterritorial jurisdiction and any expansion or reduction in a municipality's extraterritorial jurisdiction that affects property that is subject to a preliminary or final plat filed with the municipality or that was previously approved under the platting statute does not affect any rights accrued under Chapter 245 of the Texas Local Government Code, the Texas vested rights statute. The approval of the plat or any permit remains effective as provided by Chapter 245 regardless of the change in designation. An agreement may grant the authority to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction of a municipality as follows:

- A municipality may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may

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<sup>12</sup> *Id.*, § 212.007(a).

<sup>13</sup> *See id.*, § 242.001(a).

<sup>14</sup> *Id.*, § 242.001(c).

<sup>15</sup> *Id.*

regulate subdivisions under Subchapter A of Chapter 212 and other statutes applicable to municipalities;

- A county may be granted exclusive jurisdiction to regulate subdivision plats and approve related permits in the extraterritorial jurisdiction and may regulate subdivisions under Sections 232.001-.005, Subchapter B or C, Chapter 232, and other statutes applicable to counties;
- A municipality and county may apportion the area within the extraterritorial jurisdiction of the municipality with the municipality regulating subdivision plats and approving related permits in the area assigned to the municipality and the county regulating subdivision plats and approving related permits in the area assigned to the county; or
- A municipality and a county may enter into an interlocal agreement that establishes one office that is authorized to accept plat applications for tracts of land located in the extraterritorial jurisdiction; collect municipal and county plat application fees in a lump-sum amount; and provide applicants one response indicating approval or denial of the plat application; and establishes a consolidated and consistent set of regulations related to plats and subdivisions of land as authorized by Chapter 212, Sections 232.001-232.005, Subchapters B and C, Chapter 232, and other statutes applicable to municipalities and counties that will be enforced in the extraterritorial jurisdiction.

A question that was frequently raised by local government officials under S.B. 1445 is what happens if a city did not enter into the required agreement? H.B. 1445 contained no penalty provision and, as a result, had no “real teeth” to encourage compliance. Legislation passed in the 78th Legislature addressed this issue.

### **C. H.B. 1204 - ETJ Agreements Between Cities and Counties**

This bill modified the provisions of Chapter 242 of the Texas Local Government Code (added by H.B. 1445, 2001 Session), which require a city and county to enter into an agreement specifying which entity will regulate subdivisions of property in the city’s ETJ. **The bill applies only to an agreement or subdivision plat that is filed on or after the bill’s effective date, which is immediate upon the governor’s signature, which was on June 20, 2003. A development agreement or subdivision plat that was filed before June 20, 2003, is governed by the prior law. This means that existing agreements developed during the past two years are grandfathered.** Specifically, the bill

1. Provides that the agreement requirement does not apply to land subject to a development agreement between a city and an owner of land in the city’s ETJ.
2. Provides that a city and a county may not both regulate subdivisions or “approve related permits” in the ETJ of a city after an agreement is executed.

3. Requires a city and county, on reaching an agreement, to certify that the agreement complies with the requirements of Chapter 242 of the Texas Local Government Code.
4. Provides that any expansion or reduction in a city's ETJ that affects property that is subject to a preliminary or final plat, a plat application, or an application for a related permit filed with the city or the county or that was previously approved does not affect any rights accrued under Chapter 245 of the Texas Local Government Code, the "permit vesting" or "vested rights" statute).
5. Provides that if the city and county enter into an agreement to establish one, joint office to regulate subdivision plats in the ETJ, the office must establish a single set of consolidated and consistent regulations related to plats, subdivision construction plans, and subdivisions of land.
6. Requires a city and a county that have not entered into an agreement by January 1, 2004 (in the case of a city with a population of 100,000 or more) or January 1, 2006 (in the case of a city with a population of 99,000 or less) to enter into arbitration.
7. Provides a method by which either an arbitrator or arbitration panel is chosen.
8. Limits the authority of the arbitrator or arbitration panel to issuing a decision relating only to the disputed issues regarding the authority of the county or city to regulate plats, subdivisions, or development plans.
9. Provides that each party is equally liable for the costs of arbitration.
10. Mandates that if the arbitrator or arbitration panel has not reached a decision in a 60-day period, the arbitrator or arbitration panel shall issue an interim decision regarding the regulation of plats and subdivisions and approval of related permits in the city's ETJ, which must provide for a single set of regulations and authorize a single entity to regulate plats and subdivisions until a final decision is reached.
11. Provides that if an agreement establishes a plan for future roads that conflicts with a proposal or plan for future roads adopted by a metropolitan planning organization, the proposal or plan of the metropolitan planning organization prevails.
12. Provides that in certain counties (a) a plat may not be filed with the county clerk without the approval of both the city and the county; (b) if city and county regulations conflict, the more stringent regulation prevails; and (c) if one entity requires a plat to be filed and the other does not, the entity that does not require a plat must certify that fact in writing to the subdivider.

13. Provides that property subject to pending approval of a preliminary or final plat application filed after September 1, 2002, that is released from a city's ETJ shall be subject only to county approval of the plat application and related permits.

#### **D. Annexation Agreements, House Bill 1197 and the ETJ**

##### **H.B. 1197 - ETJ Agreements with Landowners**

This bill, adopted by the Legislature in 2003, added Subchapter G, entitled "Agreement Governing Certain Land in a Municipality's Extraterritorial Jurisdiction," to Chapter 212 of the Texas Local Government Code, "Municipal Regulation of Subdivisions and Property Development." The bill allows a city council to enter into a written contract with an owner of land in the city's extraterritorial jurisdiction ("ETJ") to (1) guarantee the land's immunity from annexation for a period of up to fifteen years; (2) extend certain aspects of the city's land use and environmental authority over the land; (3) authorize enforcement of land use regulations other than those that apply within the city; (4) provide for infrastructure for the land; and (5) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties. The bill also validates an agreement entered into prior to the effective date of the bill, so long as the agreement complies with the bill's requirements.

Prior to HB 1197, there was no specific statutory authorization for a municipality to enter into an agreement with an owner of land in the municipality's ETJ to govern the future development of the land. H.B. 1197 authorizes the governing body of a municipality to make a written contract with an owner of land that is located in the ETJ of the municipality to authorize some other type of use.

#### **E. Development Plats**

Sections 212.041-212.050 of the Texas Local Government Code provide authority for cities to require development plats in the ETJ. A development plat, however, should not be confused with a subdivision plat. The authority to regulate subdivisions is found in Subchapter A of Chapter 212 whereas the authority to regulate property development through the use of development plats is found in Subchapter B of Chapter 212 of the Texas Local Government Code. A city must choose by ordinance to be covered by Subchapter B (or the law codified by that subchapter)<sup>16</sup> and if a city so elects, any person who proposes development of a tract of land in the corporate limits or ETJ must prepare a development plat. "Development," for purposes of Subchapter B, means "the new construction or the enlargement of any exterior dimension of any building, structure or improvement."<sup>17</sup> While *City of Lucas*<sup>18</sup> clearly authorizes the issuance of building permits in the ETJ, Subchapter B expressly provides that it

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<sup>16</sup> See *id.*, § 212.041.

<sup>17</sup> *Id.*, § 212.043(1).

<sup>18</sup> *City of Lucas v. North Texas Municipal Water Dist.*, 724 S.W.2d 811 (Tex. App.—Dallas 1986, writ ref'd n.r.e.).

“does not authorize a municipality to require municipal building permits or otherwise enforce the municipality’s building code in its extraterritorial jurisdiction.”<sup>19</sup>

## **F. Sign Regulations**

Chapter 216 of the Texas Local Government Code addresses, in part, the relocation, reconstruction or removal of a sign in the ETJ. Specifically, Section 216.003 authorizes a city to “require the relocation, reconstruction, or removal of any sign within its corporate limits or extraterritorial jurisdiction,” subject to the detailed regulatory scheme encompassed in Chapter 216 (creation of municipal sign control board, compensation requirements, exceptions and appeal provisions). It should be noted, however, municipal authority to require the relocation, reconstruction or removal of signs does not apply to on premises signs in the ETJ of municipalities in a county with a population of more than 2.4 million (Harris County) or of a county that borders a county with that population.<sup>20</sup>

A home-rule municipality has additional authority to regulate signs. Home rule cities may license, regulate, control or prohibit the erection of signs or billboards by charter or ordinance in compliance with Chapter 216 of the Local Government Code.<sup>21</sup> Cities may regulate the location, proximity, size, separation, setback and height provisions so long as the ordinance bears a reasonable relationship to the public health, safety or general welfare.<sup>22</sup>

A home-rule municipality may extend the provisions of its outdoor sign regulatory ordinance and enforce the ordinance within its ETJ. In lieu of regulatory ordinances, however, home-rule cities may allow the Texas Transportation Commission to regulate outdoor signs in the ETJ by filing a written notice with the Commission. If a municipality extends its outdoor sign ordinance within its ETJ, the municipal ordinance supersedes the regulations imposed by or adopted by the Commission.<sup>23</sup>

The foregoing authority granted to a home-rule municipality does not apply to (1) on premise signs in the ETJ of municipalities in county with a population of more than 2.4 million (Harris County) or a county that borders a county with that population; or (2) on premise signs in the ETJ of a municipality with a population of 1.5 million or more that are located in a county that is adjacent to the county in which the majority of the land of the municipality is located.<sup>24</sup>

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<sup>19</sup> Tex. Local Gov’t Code § 212.049.

<sup>20</sup> *Id.*, § 216.0035.

<sup>21</sup> *Id.*, § 216.901.

<sup>22</sup> *Lubbock Poster Co. v. City of Lubbock*, 569 S.W.2d 935, 939 (Tex.Civ.App.—Amarillo 1978, writ ref’d n.r.e.), cert. denied, 444 U.S. 833 (1979).

<sup>23</sup> See Tex. Local Gov’t Code § 216.902.

<sup>24</sup> *Id.*, § 216.902.



### **G. Industrial Districts and Planned Unit Development Districts**

Section 42.044 of the Texas Local Government Code authorizes a city to designate a part of its ETJ as an industrial district and treat that area in the manner considered to be in the best interest of the city, including making written contracts with the owner of the land regarding annexation and regulations. Chapter 42 of the Local Government Code also addresses planned unit development districts in the ETJ. The governing body of a municipality that has disannexed territory previously annexed for limited purposes may designate an area within its ETJ as a planned unit development district by written agreement with the owner of the land. The planned unit development district must contain no fewer than 250 acres.<sup>25</sup>

### **H. Impact Fees**

Impact fees, pursuant to Chapter 395 of the Texas Local Government Code, may be imposed in the ETJ; however, impact fees for roadway facilities may not be imposed in the ETJ. Section 395.001(9) of the Texas Local Government Code provides the following guidance regarding service areas for the various statutorily-authorized impact fees:

*Water and wastewater facilities.* Most cities in Texas have adopted the entire city and the city's ETJ as the service area and thus, impact fees are the same city-wide.

*Roadway facilities.* The service area is limited to an area within the corporate boundaries (*i.e.*, ETJ cannot be included) and not exceeding six miles.

*Storm water, drainage and flood control facilities.* The service area is limited to all or part of the land within the corporate limits of the city or its ETJ actually served by the storm water, drainage and flood control facilities designated in the Capital Improvements Plan and shall not extend across watershed boundaries.

### **I. Municipal Drainage Utility Systems**

According to Section 402.044(8) of the Texas Local Government Code, the boundaries of a municipal drainage system service area may extend into areas of the ETJ that contribute overland flow into the watershed of the municipality. Subchapter C of Chapter 402 of the Local Government Code addresses the procedures for creating such a drainage utility and the methods by which to fund such a utility.

## **IV. The 5,000 Foot "Nuisance Zone"**

In 1954 the Texas Court of Criminal Appeals held that when a state statute grants a city express authority to prohibit nuisances outside the city limits, that grant impliedly confers jurisdiction upon the municipal court for the prosecution of those offenses committed outside the city limits. *Treadgill v. State*<sup>26</sup> dealt with a Houston ordinance prohibiting the sale of fireworks

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<sup>25</sup> See generally *id.*, § 42.046.

<sup>26</sup> 275 S.W.2d 658, 664 (Tex.Crim.App. 1954).

within 5,000 feet of the city limits. The fireworks ordinance was adopted pursuant to the predecessor statute to Section 217.042 of the Texas Local Government Code.<sup>27</sup> This statute allows a home-rule city to define and prohibit any nuisance within the limits of the city and within 5,000 feet of the city limits.<sup>28</sup> Attorney General John Cornyn extended the analysis of *Treadgill* to a Wylie ordinance that declared outdoor burning a nuisance and prohibited it within 5,000 feet of the city limits.<sup>29</sup> Based upon the analysis contained in the foregoing Attorney General opinion, one can conclude that any ordinance adopted by a home-rule municipality under the authority of Section 217.042 of the Local Government Code that defines and prohibits a nuisance within the city limits and extends that prohibition to that area within 5,000 feet of the city limits may be enforced in municipal court.

Examples of city ordinances routinely adopted pursuant to the express authority contained in § 217.042 of the Texas Local Government Code that could be or are considered to be in the nuisance category are:

- sale, storage or use of fireworks in the city or within 5,000 feet of the city limits;
- high weeds and grass;
- litter control and abatement;
- unwholesome matters (filth, decaying matters, garbage, hazardous materials and substances, etc.);
- mosquito control;
- rodent control; and
- junked and abandoned vehicles.

It should be noted, however, that the foregoing activities must be declared nuisances by ordinance *and* extend their application out 5,000 feet from the existing city limits. Thus, if a home-rule city desires to enforce these activities extraterritorially, city ordinances must be

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<sup>27</sup> Section 217.042 of the Texas Local Government Code provides as follows:

- (a) The municipality may define and prohibit any nuisance within the limits of the municipality and within 5,000 feet outside the limits.
- (b) The municipality may enforce all ordinances necessary to prevent and summarily abate and remove a nuisance.

<sup>28</sup> Type A and Type B general law municipalities also may prohibit nuisances. Type A municipalities may abate and remove a nuisance, define and declare what constitutes a nuisance and punish by fine those persons responsible for the nuisance. Tex. Local Gov't Code § 217.002. Type B municipalities may prevent nuisances and have nuisances removed at the expense of the person who is responsible. Tex. Local Gov't Code § 217.022.

<sup>29</sup> See Op. Tex. Att'y Gen. No. JC-0025 (1999).

amended to reflect the extraterritorial application of the ordinances. Further, a home-rule city cannot simply declare all conduct a nuisance and extend such nuisance regulations 5,000 feet from the city's boundaries. A "nuisance" is anything that works injury, harm or prejudice to an individual or public, or which causes a well-founded apprehension of danger. A nuisance obstructs, impairs or destroys the reasonable, peaceful and comfortable use of property.<sup>30</sup>

## V. The "SOB Zone"

Chapter 243 of the Texas Local Government Code authorizes city and county regulation of sexually oriented businesses ("SOBs"). Most city ordinances that regulate SOBs provide distance requirements; that is, requirements that an SOB may not be located within a certain number of feet of a church, school, residentially-zoned area, day care center or other sexually oriented business.<sup>31</sup> In Texas Attorney General Opinion No. JC-0485 (2002), the question was presented whether a municipality may enforce its own SOB ordinance when the entity to be protected is outside the corporate limits of the municipality. At issue in this opinion was a church that, while located outside the corporate limits of San Antonio, was within 1,000 feet of an SOB located within the corporate limits of San Antonio. Since Section 243.003(b) of the Local Government Code specifically provides that "[a] regulation adopted by a municipality applies only inside the municipality's corporate limits," could the San Antonio SOB ordinance's distance requirements be enforced?

After discussion of case law from other states, the Attorney General concluded that even though Section 243.003 of the Local Government Code does not give extraterritorial effect to an SOB ordinance, Section 243.006(a)(2) of the Local Government Code nevertheless may apply.

A city may apply a municipal ordinance to prohibit a sexually oriented business within a specified distance of a school, church, or other entity covered by section 243.006(a)(2) of the Local Government Code even though that entity is not within the corporate limits of the city in question, so long as the sexually oriented business is within those limits. Such application does not violate the statutory requirement that the ordinance apply only in the city's corporate limits.<sup>32</sup>

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<sup>30</sup> *Parker v. City of Fort Worth*, 281 S.W.2d 721, 723 (Tex.Civ.App.—Fort Worth 1955, no writ). See also Op.Tex.Att'y Gen. No. JM-226 (1984) (discussing what activities may constitute a nuisance per se or nuisance at common law).

<sup>31</sup> See Tex.Local Gov't Code § 243.006(a). Section 243.006(a) of the Texas Local Government Code provides as follows:

- (a) The location of sexually oriented businesses may be:
  - (1) restricted to particular areas; or
  - (2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business.

<sup>32</sup> Op.Tex.Att'y Gen. No. JC-0485 (2002) at 4.

Thus, the distance requirements contained in local SOB ordinances may be enforced, even if the underlying SOB ordinance has no extraterritorial effect.

## **VI. Conclusion**

The single most important issue for municipalities in regulating activities in the ETJ often tends to be enforcement issues, not whether activities are statutorily authorized to be regulated in the ETJ. Nevertheless, statutory authorization for municipal regulation in the ETJ tends to be “hit and miss” with no one source of such authority.

LOCAL GOVERNMENT CODE

TITLE 2. ORGANIZATION OF MUNICIPAL GOVERNMENT

SUBTITLE C. MUNICIPAL BOUNDARIES AND ANNEXATION

CHAPTER 42. EXTRATERRITORIAL JURISDICTION OF MUNICIPALITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE OF EXTRATERRITORIAL JURISDICTION. 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.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

SUBCHAPTER B. DETERMINATION OF EXTRATERRITORIAL JURISDICTION

Sec. 42.021. EXTENT OF EXTRATERRITORIAL JURISDICTION. (a) The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within one-half mile of those boundaries, in the case of a municipality with fewer than 5,000 inhabitants;

(2) within one mile of those boundaries, in the case of a municipality with 5,000 to 24,999 inhabitants;

(3) within two miles of those boundaries, in the case of a municipality with 25,000 to 49,999 inhabitants;

(4) within 3-1/2 miles of those boundaries, in the case of a municipality with 50,000 to 99,999 inhabitants; or

(5) within five miles of those boundaries, in the case of a municipality with 100,000 or more inhabitants.

(b) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located:

(1) within five miles of those boundaries on a barrier island; or

(2) within one-half mile of those boundaries off a barrier island.

(c) Subsection (b) applies to a municipality that has:

(1) a population of 2,000 or more; and

(2) territory located:

(A) entirely on a barrier island in the Gulf of Mexico;

and

(B) within 30 miles of an international border.

(d) Regardless of Subsection (a), the extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality and that is located within three miles of those boundaries if the municipality:

(1) has a population of not less than 20,000 or more than 29,000; and

(2) is located in a county that has a population of 45,000 or more and borders the Trinity River.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 761 (H.B. 3325), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 215 (H.B. 91), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 612 (S.B. 508), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001 (33), eff. September 1, 2013.

Sec. 42.022. EXPANSION OF EXTRATERRITORIAL JURISDICTION. (a) When a municipality annexes an area, the extraterritorial jurisdiction of the municipality expands with the annexation to comprise, consistent with Section 42.021, the area around the new municipal boundaries.

(b) The extraterritorial jurisdiction of a municipality may expand beyond the distance limitations imposed by Section 42.021 to

include an area contiguous to the otherwise existing extraterritorial jurisdiction of the municipality if the owners of the area request the expansion.

(c) The expansion of the extraterritorial jurisdiction of a municipality through annexation, request, or increase in the number of inhabitants may not include any area in the existing extraterritorial jurisdiction of another municipality, except as provided by Subsection (d).

(d) The extraterritorial jurisdiction of a municipality may be expanded through annexation to include area that on the date of annexation is located in the extraterritorial jurisdiction of another municipality if a written agreement between the municipalities in effect on the date of annexation allocates the area to the extraterritorial jurisdiction of the annexing municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 1, eff. June 17, 2011.

Sec. 42.0225. EXTRATERRITORIAL JURISDICTION AROUND CERTAIN MUNICIPALLY OWNED PROPERTY. (a) This section applies only to an area owned by a municipality that is:

- (1) annexed by the municipality; and
- (2) not contiguous to other territory of the municipality.

(b) Notwithstanding Section 42.021, the annexation of an area described by Subsection (a) does not expand the extraterritorial jurisdiction of the municipality.

Added by Acts 1999, 76th Leg., ch. 1167, Sec. 1, eff. Sept. 1, 1999.

Sec. 42.023. REDUCTION OF EXTRATERRITORIAL JURISDICTION. The extraterritorial jurisdiction of a municipality may not be reduced unless the governing body of the municipality gives its written consent by ordinance or resolution, except:

- (1) in cases of judicial apportionment of overlapping extraterritorial jurisdictions under Section 42.901;

- (2) in accordance with an agreement under Section 42.022 (d); or
- (3) as necessary to comply with Section 42.0235.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 2, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 1, eff. June 18, 2015.

Sec. 42.0235. LIMITATION ON EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) Notwithstanding Section 42.021, the extraterritorial jurisdiction of a municipality with a population of more than 175,000 located in a county that contains an international border and borders the Gulf of Mexico terminates two miles from the extraterritorial jurisdiction of a neighboring municipality if extension of the extraterritorial jurisdiction beyond that limit would:

- (1) completely surround the corporate boundaries or extraterritorial jurisdiction of the neighboring municipality; and
- (2) limit the growth of the neighboring municipality by precluding the expansion of the neighboring municipality's extraterritorial jurisdiction.

(b) A municipality shall release extraterritorial jurisdiction as necessary to comply with Subsection (a).

(c) Notwithstanding any other law, a municipality that owns an electric system and that releases extraterritorial jurisdiction under Subsection (b) may provide electric service in the released area to the same extent that the service would have been provided if the municipality had annexed the area.

Added by Acts 2015, 84th Leg., R.S., Ch. 941 (H.B. 4059), Sec. 2, eff. June 18, 2015.

Sec. 42.024. TRANSFER OF EXTRATERRITORIAL JURISDICTION BETWEEN CERTAIN MUNICIPALITIES. (a) In this section:



(1) "Adopting municipality" means a home-rule municipality with a population of less than 25,000 that purchases and appropriates raw water for its water utility through a transbasin diversion permit from one or two river authorities in which the municipality has territory.

(2) "Releasing municipality" means a home-rule municipality with a population of more than 450,000 that owns an electric utility, that has a charter provision allowing for limited-purpose annexation, and that has annexed territory for a limited purpose.

(b) The governing body of an adopting municipality may by resolution include in its extraterritorial jurisdiction an area that is in the extraterritorial jurisdiction of a releasing municipality if:

(1) the releasing municipality does not provide water, sewer services, and electricity to the released area;

(2) the owners of a majority of the land within the released area request that the adopting municipality include in its extraterritorial jurisdiction the released area;

(3) the released area is:

(A) adjacent to the territory of the adopting municipality;

(B) wholly within a county in which both municipalities have territory; and

(C) located in one or more school districts, each of which has the majority of its territory outside the territory of the releasing municipality;

(4) the adopting municipality adopts ordinances or regulations within the released area for water quality standards relating to the control or abatement of water pollution that are in conformity with those of the Texas Natural Resource Conservation Commission applicable to the released area on January 1, 1995;

(5) the adopting municipality has adopted a service plan to provide water and sewer service to the area acceptable to the owners of a majority of the land within the released area; and

(6) the size of the released area does not exceed the difference between the total area within the extraterritorial jurisdiction of the adopting municipality, exclusive of the extraterritorial jurisdiction of the releasing municipality, on the

date the resolution was adopted under this subsection, as determined by Section 42.021, and the total area within the adopting municipality's extraterritorial jurisdiction on the date of the resolution.

(c)(1) The service plan under Subsection (b)(5) shall include an assessment of the availability and feasibility of participation in any regional facility permitted by the Texas Natural Resource Conservation Commission in which the releasing municipality is a participant and had plans to provide service to the released area. The plan for regional service shall include:

(A) proposed dates for providing sewer service through the regional facility;

(B) terms of financial participation to provide sewer service to the released area, including rates proposed for service sufficient to reimburse the regional participants over a reasonable time for any expenditures associated with that portion of the regional facility designed or constructed to serve the released area as of January 1, 1993; and

(C) participation by the adopting municipality in governance of the regional facility based on the percentage of land to be served by the regional facility in the released area compared to the total land area to be served by the regional facility.

(2) The adopting municipality shall deliver a copy of the service plan to the releasing municipality and any other participant in any regional facility described in this subsection at least 30 days before the resolution to assume extraterritorial jurisdiction. The releasing municipality and any other participant in any regional facility described in this subsection by resolution shall, within 30 days of delivery of the service plan, either accept that portion of the service plan related to participation by the adopting municipality in the regional facility or propose alternative terms of participation.

(3) If the adopting municipality, the releasing municipality, and any other participant in any regional facility described in this subsection fail to reach agreement on the service plan within 60 days after the service plan is delivered, any municipality that is a participant in the regional facility or any owner of land within the area to be released may appeal the matter to

the Texas Natural Resource Conservation Commission. The Texas Natural Resource Conservation Commission shall, in its resolution of any differences between proposals submitted for review in this subsection, use a cost-of-service allocation methodology which treats each service unit in the regional facility equally, with any variance in rates to be based only on differences in costs based on the time service is provided to an area served by the regional facility. The Texas Natural Resource Conservation Commission may allow the adopting municipality, the releasing municipality, or any other participant in any regional facility described in this subsection to withdraw from participation in the regional facility on a showing of undue financial hardship.

(4) A decision by the Texas Natural Resource Conservation Commission under this subsection is not subject to judicial review, and any costs associated with the commission's review shall be assessed to the parties to the decision in proportion to the percentage of land served by the regional facility subject to review in the jurisdiction of each party.

(5) The releasing municipality shall not, prior to January 1, 1997, discontinue or terminate any interlocal agreement, contract, or commitment relating to water or sewer service that it has as of January 1, 1995, with the adopting municipality without the consent of the adopting municipality.

(d) On the date the adopting municipality delivers a copy of the resolution under Subsection (b) to the municipal clerk of the releasing municipality, the released area shall be included in the extraterritorial jurisdiction of the adopting municipality and excluded from the extraterritorial jurisdiction of the releasing municipality.

(e) If any part of a tract of land, owned either in fee simple or under common control or undivided ownership, was or becomes split, before or after the dedication or deed of a portion of the land for a public purpose, between the extraterritorial jurisdiction of a releasing municipality and the jurisdiction of another municipality, or is land described in Subsection (b)(3)(C), the authority to act under Chapter 212 and the authority to regulate development and building with respect to the tract of land is, on the request of the owner to the municipality, with the municipality selected by the

owner of the tract of land. The municipality selected under this subsection may also provide or authorize another person or entity to provide municipal services to land subject to this subsection.

(f) Nothing in this section requires the releasing municipality to continue to participate in a regional wastewater treatment plant providing service, or to provide new services, to any territory within the released area.

(g) This section controls over any conflicting provision of this subchapter.

Added by Acts 1995, 74th Leg., ch. 766, Sec. 1, eff. Aug. 28, 1995.

Sec. 42.025. RELEASE OF EXTRATERRITORIAL JURISDICTION BY CERTAIN MUNICIPALITIES. (a) In this section, "eligible property" means any portion of a contiguous tract of land:

(1) that is located in the extraterritorial jurisdiction of a municipality within one-half mile of the territory of a proposed municipal airport;

(2) for which a contract for land acquisition services was awarded by the municipality; and

(3) that has not been acquired through the contract described by Subdivision (2) for the proposed municipal airport.

(b) The owner of eligible property may petition the municipality to release the property from the municipality's extraterritorial jurisdiction not later than June 1, 1996. The petition must be filed with the secretary or clerk of the municipality.

(c) Not later than the 10th day after the date the secretary or clerk receives a petition under Subsection (b), the municipality by resolution shall release the eligible property from the extraterritorial jurisdiction of the municipality.

(d) Eligible property that is released from the extraterritorial jurisdiction of a municipality under Subsection (c) may be included in the extraterritorial jurisdiction of another municipality if:

(1) any part of the other municipality is located in the same county as the property; and

(2) the other municipality and the owner agree to the inclusion of the property in the extraterritorial jurisdiction.

Added by Acts 1995, 74th Leg., ch. 788, Sec. 1, eff. June 16, 1995.  
Renumbered from Local Government Code Sec. 42.024 by Acts 1997, 75th Leg., ch. 165, Sec. 31.01(64), eff. Sept. 1, 1997.

Sec. 42.0251. RELEASE OF EXTRATERRITORIAL JURISDICTION BY CERTAIN GENERAL-LAW MUNICIPALITIES. (a) This section applies only to a general-law municipality:

- (1) that has a population of less than 3,000;
- (2) that is located in a county with a population of more than 500,000 that is adjacent to a county with a population of more than four million; and
- (3) in which at least two-thirds of the residents reside within a gated community.

(b) A municipality shall release an area from its extraterritorial jurisdiction not later than the 10th day after the date the municipality receives a petition requesting that the area be released that is signed by at least 80 percent of the owners of real property located in the area requesting release.

Added by Acts 2011, 82nd Leg., R.S., Ch. 337 (H.B. 2902), Sec. 3, eff. June 17, 2011.

Sec. 42.026. LIMITATION ON EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) In this section, "navigable stream" has the meaning assigned by Section 21.001, Natural Resources Code.

(b) This section applies only to an area that is:

- (1) located in the extraterritorial jurisdiction of a home-rule municipality that has a population of 60,000 or less and is located in whole or in part in a county with a population of 240,000 or less;
- (2) located outside the county in which a majority of the land area of the municipality is located; and
- (3) separated from the municipality's corporate boundaries by a navigable stream.

(c) A municipality that, on August 31, 1999, includes that area in its extraterritorial jurisdiction shall, before January 1, 2000:

(1) adopt an ordinance removing that area from the municipality's extraterritorial jurisdiction; or

(2) enter into an agreement with a municipality located in the county in which that area is located to transfer that area to the extraterritorial jurisdiction of that municipality.

(d) If the municipality that is required to act under Subsection (c) does not do so as provided by that subsection, the area is automatically removed from the extraterritorial jurisdiction of that municipality on January 1, 2000.

(e) Section 42.021 does not apply to a transfer of extraterritorial jurisdiction under Subsection (c)(2).

Added by Acts 1999, 76th Leg., ch. 1494, Sec. 1, eff. Aug. 30, 1999.

#### SUBCHAPTER C. CREATION OR EXPANSION OF GOVERNMENTAL ENTITIES IN EXTRATERRITORIAL JURISDICTION

Sec. 42.041. **MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION GENERALLY.** (a) A municipality may not be incorporated in the extraterritorial jurisdiction of an existing municipality unless the governing body of the existing municipality gives its written consent by ordinance or resolution.

(b) If the governing body of the existing municipality refuses to give its consent, a majority of the qualified voters of the area of the proposed municipality and the owners of at least 50 percent of the land in the proposed municipality may petition the governing body to annex the area. If the governing body fails or refuses to annex the area within six months after the date it receives the petition, that failure or refusal constitutes the governing body's consent to the incorporation of the proposed municipality.

(c) The consent to the incorporation of the proposed municipality is only an authorization to initiate incorporation proceedings as provided by law.

(d) If the consent to initiate incorporation proceedings is obtained, the incorporation must be initiated within six months after the date of the consent and must be finally completed within 18

months after the date of the consent. Failure to comply with either time requirement terminates the consent.

(e) This section applies only to the proposed municipality's area located in the extraterritorial jurisdiction of the existing municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2005, 79th Leg., Ch. 287 (H.B. 585), Sec. 1, eff. June 16, 2005.

For expiration of Subsections (c) and (d), see Subsections (c) and (d).

Sec. 42.0411. MUNICIPAL INCORPORATION IN EXTRATERRITORIAL JURISDICTION OF CERTAIN MUNICIPALITIES. (a) This section applies only to:

(1) an area located north and east of Interstate Highway 10 that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years; or

(2) an area located north and east of Interstate Highway 10:

(A) that is included in the extraterritorial jurisdiction, or the limited-purpose annexation area, of a municipality with a population of one million or more that has operated under a three-year annexation plan similar to the municipal annexation plan described by Section 43.052 for at least 10 years;

(B) that has not been included in the municipality's annexation plan described by Section 43.052 before the 180th day before the date consent for incorporation is requested under Section 42.041(a); and

(C) for which the municipality refused to give its consent to incorporation under Section 42.041(a).

(b) The residents of the area described by Subsection (a)(2) may initiate an attempt to incorporate as a municipality by filing a written petition signed by at least 10 percent of the registered

voters of the area of the proposed municipality with the county judge of the county in which the proposed municipality is located. The petition must request the county judge to order an election to determine whether the area of the proposed municipality will incorporate. An incorporation election under this section shall be conducted in the same manner as an incorporation election under Subchapter A, Chapter 8. The consent of the municipality that previously refused to give consent is not required for the incorporation.

(c) In this subsection, "deferred annexation area" means an area that has entered into an agreement with a municipality under which the municipality defers annexation of the area for at least 10 years. An area described by Subsection (a)(1) that is located within 1-1/2 miles of a municipality's deferred annexation area or adjacent to the corporate boundaries of the municipality may not be annexed for limited or full purposes during the period provided under the agreement. During the period provided under the agreement, the residents of the area may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.

(d) This subsection applies only to an area that is described by Subsection (a)(1) and removed from a municipality's annexation plan under Section 43.052(e) two times or more. The residents of the area and any adjacent territory that is located within the extraterritorial jurisdiction of the municipality or located within an area annexed for limited purposes by the municipality and that is adjacent to the corporate boundaries of the municipality may incorporate in accordance with the incorporation proceedings provided by law, except that the consent of the municipality is not required for the incorporation. This subsection expires on the later of:

(1) September 1, 2009; or

(2) the date that all areas entitled to incorporate under this subsection have incorporated.



Added by Acts 2005, 79th Leg., Ch. 287 (H.B. 585), Sec. 2, eff. June 16, 2005.

Sec. 42.042. CREATION OF POLITICAL SUBDIVISION TO SUPPLY WATER OR SEWER SERVICES, ROADWAYS, OR DRAINAGE FACILITIES IN EXTRATERRITORIAL JURISDICTION. (a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not be created in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this subsection and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the creation of the political subdivision other than those expressly permitted by Sections 54.016(e) and (i), Water Code.

(b) If the governing body fails or refuses to give its consent for the creation of the political subdivision on mutually agreeable terms within 90 days after the date it receives a written request for the consent, a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision may petition the governing body to make available to the area the water, sanitary sewer services, or both that would be provided by the political subdivision.

(c) If, within 120 days after the date the governing body receives the petition, the governing body fails to make a contract with a majority of the qualified voters of the area of the proposed political subdivision and the owners of at least 50 percent of the land in the proposed political subdivision to provide the services, that failure constitutes the governing body's consent to the creation of the proposed political subdivision.

(d) The consent to the creation of the political subdivision is only an authorization to initiate proceedings to create the political subdivision as provided by law.

(e) Repealed by Acts 1997, 75th Leg., ch. 1070, Sec. 55, eff. Sept. 1, 1997.

(f) If the municipality fails or refuses to give its consent to the creation of the political subdivision or fails or refuses to

execute a contract providing for the water or sanitary sewer services requested within the time limits prescribed by this section, the applicant may petition the Texas Natural Resource Conservation Commission for the creation of the political subdivision or the inclusion of the land in a political subdivision. The commission shall allow creation of the political subdivision or inclusion of the land in a proposed political subdivision on finding that the municipality either does not have the reasonable ability to serve or has failed to make a legally binding commitment with sufficient funds available to provide water and wastewater service adequate to serve the proposed development at a reasonable cost to the landowner. The commitment must provide that construction of the facilities necessary to serve the land will begin within two years and will be substantially completed within 4-1/2 years after the date the petition was filed with the municipality.

(g) On an appeal taken to the district court from the Texas Natural Resource Conservation Commission's ruling, all parties to the commission hearing must be made parties to the appeal. The court shall hear the appeal within 120 days after the date the appeal is filed. If the case is continued or appealed to a higher court beyond the 120-day period, the court shall require the appealing party or party requesting the continuance to post a bond or other adequate security in the amount of damages that may be incurred by any party as a result of the appeal or delay from the commission action. The amount of the bond or other security shall be determined by the court after notice and hearing. On final disposition, a court may award damages, including any damages for delays, attorney's fees, and costs of court to the prevailing party.

(h) A municipality may not unilaterally extend the time limits prescribed by this section through the adoption of preapplication periods or by passage of any rules, resolutions, ordinances, or charter provisions. However, the municipality and the petitioner may jointly petition the Texas Natural Resource Conservation Commission to request an extension of the time limits.

(i) Repealed by Acts 1989, 71st Leg., ch. 1058, Sec. 1, eff. Sept. 1, 1989.

(j) The consent requirements of this section do not apply to the creation of a special utility district under Chapter 65, Water

Code. If a special utility district is to be converted to a district with taxing authority that provides utility services, this section applies to the conversion.

(k) This section, except Subsection (i), applies only to the proposed political subdivision's area located in the extraterritorial jurisdiction of the municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 3(b), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1058, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 76, Sec. 11.254, eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1098 (H.B. 3378), Sec. 1, eff. June 15, 2007.

Sec. 42.0425. ADDITION OF LAND IN EXTRATERRITORIAL JURISDICTION OF MUNICIPALITY TO CERTAIN POLITICAL SUBDIVISIONS. (a) A political subdivision, one purpose of which is to supply fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not add land that is located in the extraterritorial jurisdiction of a municipality unless the governing body of the municipality gives its written consent by ordinance or resolution in accordance with this section and the Water Code. In giving its consent, the municipality may not place any conditions or other restrictions on the expansion of the political subdivision other than those expressly permitted by Section 54.016(e), Water Code.

(b) The procedures under Section 42.042 governing a municipality's refusal to consent to the creation of a political subdivision apply to a municipality that refuses to consent to the addition of land to a political subdivision under this section.

(c) An owner of land in the area proposed to be added to the political subdivision may not unreasonably refuse to enter into a contract for water or sanitary sewer services with the municipality under Section 42.042(c).

(d) This section does not apply to a political subdivision created by Chapter 289, Acts of the 73rd Legislature, Regular Session, 1993.

Added by Acts 2007, 80th Leg., R.S., Ch. 703 (H.B. 2091), Sec. 2, eff. June 15, 2007.

Sec. 42.043. REQUIREMENTS APPLYING TO PETITION. (a) A petition under Section 42.041 or 42.042 must:

(1) be written;

(2) request that the area be annexed or that the services be made available, as appropriate;

(3) be signed in ink or indelible pencil by the appropriate voters and landowners;

(4) be signed, in the case of a person signing as a voter, as the person's name appears on the most recent official list of registered voters;

(5) contain, in the case of a person signing as a voter, a note made by the person stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate;

(6) contain, in the case of a person signing as a landowner, a note made by the person opposite the person's name stating the approximate total acreage that the person owns in the area to be annexed or serviced;

(7) describe the area to be annexed or serviced and have a plat of the area attached; and

(8) be presented to the secretary or clerk of the municipality.

(b) The signatures to the petition need not be appended to one paper.

(c) Before the petition is circulated among the voters and landowners, notice of the petition must be given by posting a copy of the petition for 10 days in three public places in the area to be annexed or serviced and by publishing the notice once, in a newspaper of general circulation serving the area, before the 15th day before the date the petition is first circulated. Proof of posting and publication must be made by attaching to the petition presented to the secretary or clerk:

(1) the affidavit of any voter who signed the petition, stating the places and dates of the posting;

(2) the affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication; and

(3) the affidavit of at least three voters who signed the petition, if there are that many, stating the total number of voters residing in the area and the approximate total acreage in the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.044. CREATION OF INDUSTRIAL DISTRICT IN EXTRATERRITORIAL JURISDICTION. (a) In this section, "industrial district" has the meaning customarily given to the term but also includes any area in which tourist-related businesses and facilities are located.

(b) The governing body of a municipality may designate any part of its extraterritorial jurisdiction as an industrial district and may treat the designated area in a manner considered by the governing body to be in the best interests of the municipality.

(c) The governing body may make written contracts with owners of land in the industrial district:

(1) to guarantee the continuation of the extraterritorial status of the district and its immunity from annexation by the municipality for a period not to exceed 15 years; and

(2) with other lawful terms and considerations that the parties agree to be reasonable, appropriate, and not unduly restrictive of business activities.

(d) The parties to a contract may renew or extend it for successive periods not to exceed 15 years each. In the event any owner of land in an industrial district is offered an opportunity to renew or extend a contract, then all owners of land in that industrial district must be offered an opportunity to renew or extend a contract subject to the provisions of Subsection (c).

(e) A municipality may provide for adequate fire-fighting services in the industrial district by:

(1) directly furnishing fire-fighting services that are to be paid for by the property owners of the district;

(2) contracting for fire-fighting services, whether or not all or a part of the services are to be paid for by the property owners of the district; or

(3) contracting with the property owners of the district to have them provide for their own fire-fighting services.

(f) A property owner who provides for his own fire-fighting services under this section may not be required to pay any part of the cost of the fire-fighting services provided by the municipality to other property owners in the district.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 975, Sec. 1, eff. Aug. 30, 1993.

Sec. 42.045. CREATION OF POLITICAL SUBDIVISION IN INDUSTRIAL DISTRICT. (a) A political subdivision, one purpose of which is to provide services of a governmental or proprietary nature, may not be created in an industrial district designated under Section 42.044 by a municipality unless the municipality gives its written consent by ordinance or resolution. The municipality shall give or deny consent within 60 days after the date the municipality receives a written request for consent. Failure to give or deny consent in the allotted period constitutes the municipality's consent to the initiation of the creation proceedings.

(b) If the consent is obtained, the creation proceedings must be initiated within six months after the date of the consent and must be finally completed within 18 months after the date of the consent. Failure to comply with either time requirement terminates the consent for the proceedings.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.046. DESIGNATION OF A PLANNED UNIT DEVELOPMENT DISTRICT IN EXTRATERRITORIAL JURISDICTION. (a) The governing body of a municipality that has disannexed territory previously annexed for limited purposes may designate an area within its extraterritorial jurisdiction as a planned unit development district by written agreement with the owner of the land under Subsection (b). The agreement shall be recorded in the deed records of the county or

counties in which the land is located. A planned unit development district designated under this section shall contain no less than 250 acres. If there are more than four owners of land to be designated as a single planned unit development, each owner shall appoint a single person to negotiate with the municipality and authorize that person to bind each owner for purposes of this section.

(b) An agreement governing the creation, development, and existence of a planned unit development district established under this section shall be between the governing body of the municipality and the owner of the land subject to the agreement. The agreement shall not be effective until signed by both parties and by any other person with an interest in the land, as that interest is evidenced by an instrument recorded in the deed records of the county or counties in which the land is located. The parties may agree:

(1) to guarantee continuation of the extraterritorial status of the planned unit development district and its immunity from annexation by the municipality for a period not to exceed 15 years after the effective date of the agreement;

(2) to authorize certain land uses and development within the planned unit development;

(3) to authorize enforcement by the municipality of certain municipal land use and development regulations within the planned unit development district, in the same manner such regulations are enforced within the municipality's boundaries, as may be agreed by the landowner and the municipality;

(4) to vary any watershed protection regulations;

(5) to authorize or restrict the creation of political subdivisions within the planned unit development district; and

(6) to such other terms and considerations the parties consider appropriate.

(c) The agreement between the governing body of the municipality and the owner of the land within the planned unit development district shall be binding upon all subsequent governing bodies of the municipality and subsequent owners of the land within the planned unit development district for the term of the agreement.

(d) An agreement or a decision made under this section and an action taken under the agreement by the parties to the agreement are

not subject to an approval or an appeal brought under Section 26.177, Water Code.

Added by Acts 1989, 71st Leg., ch. 822, Sec. 5, eff. Sept. 1, 1989.  
Amended by Acts 1991, 72nd Leg., ch. 891, Sec. 1, eff. June 8, 1991.

Sec. 42.047. CREATION OF A POLITICAL SUBDIVISION IN AN AREA PROPOSED FOR A PLANNED UNIT DEVELOPMENT DISTRICT. If the governing body of a municipality that has disannexed territory previously annexed for limited purposes refuses to designate a planned unit development district under Section 42.046 no later than 180 days after the date a request for the designation is filed with the municipality by the owner of the land to be included in the planned unit development district, the municipality shall be considered to have given the consent required by Section 42.041 to the incorporation of a proposed municipality including within its boundaries all or some of such land. If consent to incorporation is granted by this subsection, the consenting municipality waives all rights to challenge the proposed incorporation in any court.

Added by Acts 1989, 71st Leg., ch. 822, Sec. 5, eff. Sept. 1, 1989.

Sec. 42.049. AUTHORITY OF WELLS BRANCH MUNICIPAL UTILITY DISTRICT. (a) Wells Branch Municipal Utility district is authorized to contract with a municipality:

(1) to provide for payments to be made to the municipality for purposes that the governing body of the district determines will further regional cooperation between the district and the municipality; and

(2) to provide other lawful terms and considerations that the district and the municipality agree are reasonable and appropriate.

(b) A contract entered into under this section may be for a term that is mutually agreeable to the parties. The parties to such a contract may renew or extend the contract.

(c) A municipality may contract with the district to accomplish the purposes set forth in Subsection (a) of this section. In a contract entered into under this section, a municipality may agree



that the district will remain in existence and be exempt from annexation by the municipality for the term of the contract.

(d) A contract entered into under this section will be binding on all subsequent governing bodies of the district and of the municipality for the term of the contract.

(e) The district may make annual appropriations from its operations and maintenance tax or other revenues lawfully available to the district to make payments to a municipality under a contract entered into under this section.

Added by Acts 1999, 76th Leg., ch. 926, Sec. 4, eff. June 18, 1999.

#### SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 42.901. APPORTIONMENT OF EXTRATERRITORIAL JURISDICTIONS THAT OVERLAPPED ON AUGUST 23, 1963. (a) If, on August 23, 1963, the extraterritorial jurisdiction of a municipality overlapped the extraterritorial jurisdiction of one or more other municipalities, the governing bodies of the affected municipalities may apportion the overlapped area by a written agreement approved by an ordinance or a resolution adopted by the governing bodies.

(b) A municipality having a claim of extraterritorial jurisdiction to the overlapping area may bring an action as plaintiff in the district court of the judicial district in which the largest municipality having a claim to the area is located. The plaintiff municipality must name as a defendant each municipality having a claim of extraterritorial jurisdiction to the area and must request the court to apportion the area among the affected municipalities. In apportioning the area, the court shall consider population densities, patterns of growth, transportation, topography, and land use in the municipalities and the overlapping area. The area must be apportioned among the municipalities:

(1) so that each municipality's part is contiguous to the extraterritorial jurisdiction of the municipality or, if the extraterritorial jurisdiction of the municipality is totally overlapped, is contiguous to the boundaries of the municipality;

(2) so that each municipality's part is in a substantially compact shape; and

(3) in the same ratio, to one decimal, that the respective populations of the municipalities bear to each other, but with each municipality receiving at least one-tenth of the area.

(c) An apportionment under this section must consider existing property lines. A tract of land or adjoining tracts of land that were under one ownership on August 23, 1963, and that do not exceed 160 acres may not be apportioned so as to be in the extraterritorial jurisdiction of more than one municipality unless the landowner gives written consent to that apportionment.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.902. RESTRICTION AGAINST IMPOSING TAX IN EXTRATERRITORIAL JURISDICTION. The inclusion of an area in the extraterritorial jurisdiction of a municipality does not by itself authorize the municipality to impose a tax in the area.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 42.903. EXTRATERRITORIAL JURISDICTION OF CERTAIN TYPE B OR C GENERAL-LAW MUNICIPALITIES. (a) This section applies only to a Type B or C general-law municipality:

- (1) that has more than 200 inhabitants;
- (2) that is wholly surrounded, at the time of incorporation, by the extraterritorial jurisdiction of another municipality; and
- (3) part of which was located, at any time before incorporation, in an area annexed for limited purposes by another municipality.

(b) The governing body of the municipality by resolution or ordinance may adopt an extraterritorial jurisdiction for all or part of the unincorporated area contiguous to the corporate boundaries of the municipality and located within one mile of those boundaries. The authority granted by this section is subject to the limitation provided by Section 26.178, Water Code.

(c) Within 90 days after the date the municipality adopts the resolution or ordinance, an owner of real property in the extraterritorial jurisdiction may petition the municipality to

release the owner's property from the extraterritorial jurisdiction. On the presentation of the petition, the property:

(1) is automatically released from the extraterritorial jurisdiction of the municipality and becomes part of the extraterritorial jurisdiction or limited purpose area of the municipality whose jurisdiction surrounded, on May 31, 1989, the municipality from whose jurisdiction the property is released; and

(2) becomes subject to any existing zoning or other land use approval provisions that applied to the property before the property was included in the municipality's extraterritorial jurisdiction under Subsection (b).

(d) The municipality may exercise in its extraterritorial jurisdiction the powers granted under state law to other municipalities in their extraterritorial jurisdiction, including the power to ensure its water supply and to carry out other public purposes.

(e) To the extent of any conflict, this section controls over other laws relating to the creation of extraterritorial jurisdiction.

Added by Acts 1991, 72nd Leg., ch. 16, Sec. 13.01(a), eff. Aug. 26, 1991.

Sec. 42.904. EXTRATERRITORIAL JURISDICTION AND VOTING RIGHTS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that has disannexed territory under Section 43.133 that it had previously annexed for limited purposes and that has extended rules to its extraterritorial jurisdiction under Section 212.003.

(b) The municipality shall allow all qualified voters residing in the municipality's extraterritorial jurisdiction to vote on any proposition that is submitted to the voters of the municipality and that involves:

(1) an adoption of or change to an ordinance or charter provision that would apply to the municipality's extraterritorial jurisdiction; or

(2) a nonbinding referendum that, if binding, would apply to the municipality's extraterritorial jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 172, Sec. 1, eff. May 17, 1993.



# ***City Council Agenda***

## ***City of Lamesa, Texas***

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 7**

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**SUBJECT: CITY MANAGER REPORT**

**SUBMITTED BY: City Manager**

### **SUMMARY STATEMENT**

- a) City Hall Closed for Thanksgiving – November 24 & 25, 2016
- b) City Hall Christmas Open House – December 9, 2016 from 11 a.m. to 4 p.m.
- c) City Hall Closed for Christmas – December 25 & 26, 2016 (holiday falls on weekend, Monday closed)
- d) City Hall Closed for New Year's Day – January 2, 2017 (holiday falls on weekend, Monday closed)

### **COUNCIL ACTION**

No City Council action required.

# ***City Council Agenda***

## ***City of Lamesa, Texas***

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 8**

**SUBJECT: EXECUTIVE SESSION**

**SUBMITTED BY: City Manager**

### **SUMMARY STATEMENT**

Council to consider convening into closed executive session under Sec. 551.074, Texas Government Code: "Personnel Matters; CLOSED MEETING. (a) This chapter does not require a governmental body to conduct an open meeting: (1) to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee."

- City Manager Evaluation

### **COUNCIL ACTION**

**DISCUSSION:** \_\_\_\_\_

Motion by Council Member \_\_\_\_\_ to convene in closed executive session in accordance with the provisions of the Texas Open Meetings to discuss and consider personnel matters. Motion seconded by Council Member \_\_\_\_\_ and upon being put to a vote the motion \_\_\_\_\_.

**VOTING:** "AYE" \_\_\_\_\_ "NAY" \_\_\_\_\_ "ABSTAIN" \_\_\_\_\_

**CERTIFIED AGENDA: EXECUTIVE SESSION OF  
THE CITY COUNCIL OF THE CITY OF LAMESA, TEXAS**

On this NOVEMBER 22, 2016, at a regularly scheduled meeting of the City Council of the City of Lamesa, Texas the Council adjourned into a closed executive session; notice of said session having been given by a notice posted at the City Hall, 601 South First Street at least seventy-two hours in advance.

**A. ANNOUNCEMENT BY PRESIDING OFFICER:**

"The City Council will begin its executive session on NOVEMBER 22, 2016, at \_\_\_\_\_ P.M."

The subject matter of each executive session deliberation is as follows:

Consider meeting in closed executive session to discuss personnel matters regarding to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of a public officer or employee." (Section 551.074 Texas Government Code).

- City Manager Evaluation

RECORD OF ACTION TAKEN: No action taken.

**B. ANNOUNCEMENT BY PRESIDING OFFICER:**

"The City Council has completed its executive session on NOVEMBER 22, 2016 at \_\_\_\_\_ P.M."

**C. CERTIFICATION:**

I hereby certify that this agenda of an executive session of the City Council of the City of Lamesa, Texas is a true and correct record of the proceedings pursuant Texas Open Meetings Act (Chapter 551, Government Code).

WITNESS my hand this NOVEMBER 22, 2016.

\_\_\_\_\_  
Josh Stevens, Mayor

# ***City Council Agenda***

***City of Lamesa, Texas***

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 9**

**SUBJECT: OPEN SESSION**

**SUBMITTED BY: City Manager**

## **SUMMARY STATEMENT**

Reconvene into open session to consider and discuss taking action regarding items discussed in Closed Session.

## **COUNCIL ACTION**

**DISCUSSION:** \_\_\_\_\_

Motion by Council Member \_\_\_\_\_ to take action regarding \_\_\_\_\_.

Motion seconded by Council Member \_\_\_\_\_ and upon being put to a vote the motion \_\_\_\_\_.

**VOTING:**            "AYE" \_\_\_\_\_            "NAY" \_\_\_\_\_            "ABSTAIN" \_\_\_\_\_



# ***City Council Agenda***

## ***City of Lamesa, Texas***

**DATE OF MEETING: NOVEMBER 22, 2016**

**AGENDA ITEM: 10**

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**ADJOURNMENT:** *Announcement by the Mayor* – “The next regular meeting of the City Council of the City of Lamesa, Texas will be held at 5:30 p.m., on **TUESDAY, DECEMBER 20, 2016** at City Hall, 601 South First Street. Persons desiring to present business to the City Council at that meeting are directed to submit a request in writing to the city secretary by **Wednesday, DECEMBER 14, 2016**, in order to be included on the agenda. There being no other business, the meeting is hereby adjourned.”