

THE PURSUIT OF PROPERTY IN TEXAS

MUNICIPAL ANNEXATION AND EXTRATERRITORIAL JURISDICTION



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The Pursuit of Property in Texas: Municipal Annexation and Extraterritorial Jurisdiction

Parker Stathatos and James Quintero

Executive Summary

The settlement of land and incorporation of municipalities in the Lone Star State have a convoluted history. The Lockean idea of the inherent right to private property and self-autonomy is ingrained in the founding documents of Texas and America. Yet, historically, the Texas Legislature and the state's municipalities have failed to secure the private property rights of many Texans.

Since the incorporation of Texas' first municipalities, local authorities have sought to breach a city's corporate boundaries to address the needs of rapidly growing populations, the impulse to control development, and the provision of services. Texas' lack of uniform governance in its unincorporated lands has resulted in a hodgepodge of municipal annexation legislation and the expansion of municipal authority. This phenomenon started well before 1963 but persisted into the 21st century.

The Municipal Annexation Act of 1963 ([HB 13, 1963](#)) was passed in response to rapid urbanization and population growth. The act sought to provide a governing structure for municipal expansion and facilitate the development of unincorporated lands by creating the extraterritorial jurisdiction (ETJ). As defined by the Local Government Code, [Section 42.021](#), "The extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality" and extends in proportion to a city's population.

Until the recent legislative reforms, inhabitants of extraterritorial jurisdictions could be involuntary annexed by their proximate home-rule municipality ([Fields & Quintero, 2015](#)). The 85th Legislature required that cities located in a county with at least 500,000 people obtain consent via a public election on the question of annexation ([SB 6, 2017](#)). The 86th Legislature ended the practice of involuntary annexation altogether by expanding the voter-approval requirement to include municipalities in counties of all population sizes ([HB 347, 2019](#)). Given the now-voluntary nature of municipal annexation, it makes sense to revisit the ETJ concept and better align the policy with people's right to political participation.

ETJs no longer serve their original purpose since the inhabitants of an ETJ are no longer subject to forced annexation. The Legislature should abolish the concept of extraterritorial jurisdiction and eliminate the exercise of municipal authority beyond city limits.

Key Points

- Property rights are an inalienable right and constitute a founding pillar of western societies.
- Municipal authority exercised in extraterritorial jurisdiction is historically analogous to taxation without representation.
- Texas' lack of uniform governance in unincorporated lands has resulted in a hodgepodge of legislation, regulation, and violation.
- Since the birth of the Republic of Texas, municipalities have sought to use authority beyond their incorporated limits to address rapid population growth, urbanization, industrialization, and the provision of services.

The abolition of ETJs would preserve the state's founding principles by securing the right to self-determination and honoring property rights. They would also provide a more efficient framework—better defined county and municipal responsibilities—to govern Texas' unincorporated lands.

Property Rights Are an Inalienable Right

Property Rights Before the Modern State

The right to property is a founding pillar of civilized societies and is accepted by western societies as an inalienable right. However, the concept of landowning as an inalienable right was a radical idea centuries ago. As history shows, the preservation of property rights requires vigilant protection by a people that respect the value of essential liberties.

Magna Carta

In 1214, English barons revolted against King John of England after experiencing numerous abuses inflicted under his tyrannical rule. Such abuses included the seizure of land and the imposition of hefty fines on property owners (Siegan, 2001, pp. 6–10). King John and the English barons resolved the conflict through the king's consent to the Magna Carta, a legal document that sought to protect the individual and property rights of the barons against further tyrannical rule (U.S. National Archives and Records Administration, n.d.-b). The Magna Carta, also known as the Great Charter, was a living document and became known by the English as the “law of the land” (Siegan, 2001, p. 12) as early as the 14th century. By the 17th century, knowledge of the charter's principles had spread throughout England's colonies, even though colonists did not enjoy the rights enumerated in the charter equally (p. 12). The Magna Carta influenced the governing documents of numerous democratic societies and formed the foundation of English common law (p. 13).

Feudalism and Absolutism

Pre-capitalist western civilizations were dominated by decentralized, agrarian societies. Prior to the 18th century, peasants across Europe did not benefit from an inherent right to own, occupy, and exchange land. Democratic ideas and individual liberties were not foreign concepts to European peoples, but highly stratified societies restricted rights like an individual's right to own land for wealthier classes. Instead, peasants inhabited and worked the lands of their feudal lords. Political power and factors of production were held by noble elites, who maintained “a monopoly of law and private rights of justice within a framework of fragmented sovereignty” (Morton, 2005, p. 498). While Europeans during said times did not question the existence of property rights, they instead debated to whom property rights should extend.

As populations across Europe rose, many peasants remained without land and were overwhelmed by “feudal dues, tithes and taxes” (Hobsbawm, 1996, p. 57). Peasants continued to suffer under feudalist systems and looked toward other structures of governance for relief. Absolute monarchies consolidated power across decentralized European populations and replaced noble elites as the primary ruling structures (Chengdan, 2010, p. 6686). The centralization of a monarchy's political power was essential to the survival of European nations during the 18th century. Monarchies that had successfully consolidated political power into a nation-state, such as the Ottoman Empire and the Habsburg Monarchy, annexed their neighbors, like Poland, that had failed to consolidate power (pp. 6686–87). Decentralized self-governance in Europe was simply not respected by large annexing powers. As European nation-states continued their crusade on decentralized peoples, absolute monarchs relied upon large bureaucratic bodies to execute the authority and functions of the Crown (p. 6689). Such bodies were prone to “embezzlement and corruption” and, as such, “invited popular resentment” (p. 6689). As individuals challenged the political and social institutions that dominated Europe, philosophers responded with revolutionary ideas.

Life, Liberty, and Property

John Locke was a prominent English philosopher who championed radical notions of individual liberties and freedoms. Democratic documents, such as the Magna Carta, the Petition of Right, and the English Bill of Rights, inspired Locke's many writings and works (Vile, n.d.). In his *Second Treatise of Government* (1690), Locke affirmed man's inalienable right to life, liberty, and property. Locke held, “every man has a property in his own person: this no body has any right to but himself. The labor of his body, and the work of his hands, we may say, are properly his” (Locke, 1690/1980, p. 19). Not only did Locke establish that each individual holds autonomy over their own body, but he also affirmed that the products of each person's body belong to that person. According to Locke, “The state of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions” (p. 9). Thus, Locke asserted that everyone has the duty and right to preserve themselves and their belongings and to protect each other. To this day, Locke's political philosophy continues to heavily influence modern thought and scholarly debate.

Locke's Labor Theory

Lockean philosophy was embraced by Americans and adopted into the nation's founding documents ([Doernberg, 1985, p. 58](#)), as reflected in the U.S. Constitution, the Declaration of Independence, and the Declaration and Resolves of the First Continental Congress ([Stern, 1966, p. 189](#)). Among the inalienable rights enumerated in the Declaration of Independence are life, liberty, and the pursuit of happiness ([U.S. National Archives and Records Administration, n.d.-a](#)). However, the Declaration of Independence's reference to "the pursuit of happiness" is simply "a delineation of 'property rights' as Locke explained them" ([Stern, 1966, p. 189](#)). Because each person has autonomy over their property—meaning themselves and the goods they produce—the "pursuit of happiness" is each person's ability to achieve satisfaction through their own property. Thus, this nation was founded on the right to property and the ability to benefit from it.

In his *Second Treatise of Government*, Locke justifies the notion of private ownership and posits his labor theory. While Locke believed that "God gave the world to men in common," he believed God also gave private property to the "industrious and rational" (Locke, 1690/2010, pp. 21–22). According to Gaba ([2007](#)), Locke's labor theory proposes that "individuals, by mixing their individual labor with common property, could unilaterally assert a claim to private and exclusive possession of the 'mixture' of property and labor" ([p. 536](#)). By embracing Locke's labor theory—a founding pillar of property rights—individuals residing in western democracies are allowed their "pursuit of happiness."

Federalism and Dual Sovereignty

The U.S. Constitution provides for a federation of states governed by "dual sovereignty," whereby political power is shared between one national government and multiple state governments. Article 1, Sec. 8 of the U.S. Constitution delegates specific enumerated powers to the federal government, such as the power to coin money, declare war, and regulate commerce with foreign nations. The 10th Amendment clarifies that powers not granted to the federal government are reserved to the states or to the people. In *Federalist* No. 45 ([Madison, 1788b, para. 9](#)), James Madison held:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite... The powers reserved to the several States will extend to all the objects which, in the ordinary course

of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

Thus, American citizens are concurrently subject to the laws of the federal and state governments, all enumerated with certain powers. The 10th Amendment of the U.S. Constitution holds, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Although the U.S. Constitution establishes the relationship between the federal government and state governments, it does not define the relationship between state and local governments. Consequently, when a state's constitution lacked clarity on the relationship between state and local governments—as was the case in Texas—constituencies looked to their municipal charters for guidance. According to Davidson ([2021](#)), "The municipal charter has the potential to be as fundamental to our understanding of local government as constitutions are to our conceptions of federal and state government" ([p. 842](#)).

Republican Form of Government

Article IV, Section 4, of the U.S. Constitution incorporates the republican form of government doctrine, which states, "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." The republican form of government doctrine establishes that America is governed through majority rule with elected representation. In *Federalist* No. 43 ([Madison, 1788a, pt. 6](#)), James Madison further held, "Whenever the States may choose to substitute other republican forms, they have a right to do so." As such, it is essential that the voices of all American citizens are heard through elected representation.

Forging Texas

Expatriation and Texas Fever

Voluntary allegiance, also known as expatriation, has been a contested topic in American debate and can be described as the "natural right under international law to unilaterally exchange citizenship in one country for another" (Schlereth, 2015, p. 13). In fact, even America's Founding Fathers did not agree on the topic of expatriation ([Green, 2009](#)). Alexander Hamilton disavowed expatriation and believed that an individual's birth should determine the country to which they pledge their allegiance, while Thomas Jefferson believed every individual has the natural right to expatriation ([Whelan, 1981](#)). In 1774, Jefferson

justified American independence to the Virginia delegates to the Continental Congress and wrote:

To remind him [the king] that our ancestors, before their emigration to America, were the free inhabitants of the British dominions in Europe and possessed a right which nature has given to all men of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies under such laws and regulations as, to them, shall seem most likely to promote public happiness. (Jefferson et al., 1774, p. 6)

During the early 19th century, “High land prices, oppressive taxation, and unrepresentative government” encouraged the westward expansion of Anglo settlers from the United States (Nackman, 1974, p. 443). Simultaneously, conflicted opinions regarding the principle of voluntary allegiance resonated in both the United States and Mexico. Several American states during this time allowed for the expatriation of their citizens, and “voluntary allegiance was a principle central to political and social life in Mexican Texas” (Schlereth, 2015, pp. 14–15). In addition, Mexico’s colonization laws recruited Anglo settlers “to become patriotic Mexican citizens” (p. 15). Under one such colonization measure, the state of Coahuila y Tejas granted land to single and married men upon becoming naturalized Mexican citizens (p. 16). By 1835, as a result of Mexico’s push to populate Texas, there were approximately 10 expatriate Americans for every Mexican in Texas (Nackman, 1974, p. 445).

When recruiting Anglo settlers to Texas, Mexico envisioned that the new arrivals would assimilate into Mexican society, which included embracing its judicial systems, converting to Catholicism, and adhering to its governmental structures. However, Anglo settlers did not assimilate into Mexican society as anticipated. Newcomers from the United States retained their old ways of living and societal structures. For example, “Wills, deeds, and court cases all show a continuation of the English common law” (Stuntz, 2005, p. 130), which was practiced in the United States. As cultural tensions between Anglo settlers and Mexican loyalists grew, many new arrivals sought to achieve greater autonomy by securing Texas’ independence from Coahuila (Weber, 1996, p. 89).

The Origin of Local Governance in the Lone Star State

Although the right to property certainly is not the exclusive determinant that led to many conflicts, it has played a critical role in forming new governments. For example, at the onset of the French Revolution, France’s National

Assembly adopted the Declaration of the Rights of Man and of the Citizen ([Bureau of International Information Programs, 2011](#)). The declaration states, “The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, safety, and resistance to oppression.” It further describes property as an “inviolable and sacred” right, except in cases of public necessity.

In 1836, Texas professed its sovereignty and declared itself independent from the Republic of Mexico with the Texas Declaration of Independence. Among many grievances enumerated in the 1836 declaration was the Mexican government’s failure “to protect the lives, liberty and property of the people, from whom [the Mexican Government’s] legitimate powers are derived” ([Texas State Library and Archives Commission, n.d.](#)). Hence, Texas Independence was fueled by two factors: Mexico’s tyrannical rule and the Mexican government’s disregard for Texans’ property rights. It is through democratic representation that property rights are secured. Lockean principles are ingrained in Texas’ founding documents, just like they are in the U.S. Declaration of Independence. The Texas Constitution holds:

All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient. (art. 1, § 2)

Locke’s doctrine of a republican form of government is thus established as a founding principle of the Republic of Texas. By ensuring democratic representation, the Republic of Texas protected Texans’ inalienable right to property.

The Incorporation of Municipalities

The Republic of Texas passed various special acts of legislation to incorporate its first municipalities. In 1837, Texas’ First Congress passed the first act of this kind—only two pages long—which incorporated the republic’s first municipalities and established a basic framework for local self-governance. Among the first incorporated municipalities under the act were the town of Nacogdoches and the city of Houston. The act, entitled “An Act to Incorporate the Town of Nacogdoches and Other Towns Herein Named” ([Gammel, 1898a, p. 1298](#)), created an elected body of aldermen, established eligibility for voting and officeholding, and provided for regular elections. With

the two-thirds approval of the town's aldermen, the act also allowed the aldermen "to levy taxes for the removal of nuisances and keeping streets in order" on land within the town's limits ([p. 1298](#)).

Until 1858, such special laws were the only provision that allowed for the incorporation of new towns and cities. The Texas Legislature passed "An Act to Provide for the Incorporation of Towns and Cities" ([Gammel, 1898b, p. 941](#)) during its 7th regular session, which provided a mechanism for the incorporation of towns and cities under Texas general law. The act required that eligible voters determine whether a proposed town or city would be incorporated. Similar to legislation that incorporated Texas' first municipalities, the 1858 act also allowed incorporations "to hold and dispose of real and personal property [that is] located within the limits of the corporation" ([p. 942](#)). The act also established an elected board of aldermen or town council for incorporated towns and cities and gave each elected body the authority to levy taxes and fines within the boundaries of each incorporation. For example, the act provided for the collection of corporation taxes upon the transfer of real and personal property that is located within a town or city.

Municipal Authority Beyond City Limits

Up to this point, the Lockean principles that undergird much of western philosophy had obviously influenced policymaking in Texas. However, as time continued, there were certain areas in which the state began to drift away from its strong commitment to property rights, albeit in slow measure. This is evidenced in some ways by the exercise and evolution of municipal authority outside a municipality's corporate boundaries.

A Framework to Govern Municipalities

In 1875, the Texas Legislature passed House Bill 390 ([1875](#)) during its second special session, which created a more comprehensive framework for cities that chose to adopt the act's provisions. Among its many provisions, HB 390 allowed for the expansion of a municipality's boundaries once the inhabitants of a certain territory "indicate a desire to be included within the limits of said incorporation" ([Gammel, 1898c, p. 486](#)). Under HB 390, the annexation of unincorporated lands to a municipality required mutual consent from the municipality and the inhabitants of the unincorporated lands ([p. 528](#)). Annexation required that a majority of qualified voters within the unincorporated lands approve of the annexation. Upon submitting approval to the municipality, the city council—if it chose to annex the unincorporated lands—could adopt an ordinance to

formally acquire the unincorporated territory. House Bill 390 granted municipalities new regulatory powers over the businesses and inhabitants within the municipality's incorporated limits, while also giving municipalities greater authority to regulate certain activities beyond their incorporated boundaries, such as those relating to public health and sanitary regulations. The changes came largely in response to several crippling public health issues. During the 19th century, Texas was plagued by numerous epidemics, including smallpox, yellow fever, measles, influenza, cholera, and whooping cough ([Burns, 2020](#)). HB 390 sought to prevent the spread of such contagious diseases by granting municipalities greater regulatory control over water services within and beyond their incorporated limits ([Gammel, 1898c, p. 498](#)). HB 390 also allowed cities to enforce quarantine laws and regulations up to 10 miles beyond their incorporated boundaries and gave municipalities the authority "to establish, maintain and regulate pest houses or hospitals" within five miles beyond their incorporated boundaries ([p. 518](#)).

Cholera is a deadly disease found in areas of poor sanitation and can be contracted through the consumption of contaminated water or food ([DSHS, 2021](#)). While cholera is now extremely rare in developed countries like the United States, Texas experienced multiple cholera epidemics that killed hundreds of people during the 1800s. Municipalities' lack of basic infrastructure and emergency services exasperated the death toll of such diseases. For example, during its first cholera epidemic in 1849, San Antonio did not have a hospital within its entire city. Even during San Antonio's second cholera outbreak in 1866, contaminated water remained stagnant throughout the city as its roads lacked proper curb and gutter infrastructure ([Beltran, 2015](#)).

Dillon's Rule

Dillon's rule was named after the late Iowa Supreme Court Justice John Dillon and "declares that local jurisdictions are the creatures of the state and may exercise only those powers expressly granted to them by the state" ([Grumm & Murphy, 1974, p. 120](#)). While Dillon's rule is believed to originate from *Merriam v. Moody's Executors* (1868), the Massachusetts Supreme Court first defined the relationship between municipalities and state governments in *Stetson v. Kemp* (1816).

Stetson v. Kempton

In 1816, *Stetson v. Kempton* was heard before the Massachusetts Supreme Court. During a meeting of

the town of Fairhaven, the town unanimously voted to impose on the town's inhabitants a tax "for the immediate protection and defense of the inhabitants of the town" (*Stetson v. Kempton*, 1816, p. 272–273). Nathaniel Stetson did not pay the tax to the town that was imposed at the town meeting, so the town confiscated personal belongings of Stetson to compensate for the unpaid taxes (p. 272). Stetson—the plaintiff—sued the town, with "William Kempton and Others" (p. 272) named as the defendants. Stetson's counsel alleged that the town of Fairhaven—although its inhabitants voted unanimously to impose the tax relating to the protection of the town—lacked the legal authority to impose this type of tax because the authority to levy taxes relating to defense and military powers rests within the purview of the U.S. Congress (p. 274). Because the town did not have the legal authority to levy the tax, Stetson's counsel also argued that the defendants committed illegal trespass on Stetson by confiscating his property (p. 272). The court sided with Stetson and held, "[towns] are limited by law; and some limitation is undoubtedly just and necessary, to prevent the minority from being at the disposal of the majority" (p. 284). The court further affirmed, "towns now being the creatures of legislation, [enjoy] only the powers which are expressly granted to them" (p. 284). Thus, the premise of Dillon's rule was established by *Stetson v. Kempton*.

Merriam v. Moody's Executors

In 1868, *Merriam v. Moody's Executors* was heard before the Iowa Supreme Court on appeal from the district court's decision. The case examined whether the city of Keokuk was within its legal authority to condemn private land following a landowner's failure to pay a special tax. The district court determined that the city's charter did not grant the city the power to sell or convey private land in the case of delinquent payments of a special tax, but the plaintiff appealed this decision (*Merriam v. Moody's Executors*, 1868, p. 169). The defendants alleged that "the city of Keokuk has, under its charter, no power to sell or to authorize the sale and conveyance of real estate for the non-payment of the special taxes" (p. 164). The court ruled that the city's charter did not allow the city to sell and convey the defendant's land (p. 176). Justice Dillon held:

A municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words [from the state]; second, those necessarily implied or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable; fourth, any fair doubt as to the existence of a power is resolved by the

courts against the corporation. ([Merriam v. Moody's Executors](#), 1868, p. 170)

Whereas the U.S. Constitution—through its system of dual sovereignty—reserves to the states powers that are not delegated to the federal government nor prohibited to the states, Dillon's rule holds that municipalities only have powers that are granted to them by their state government and establishes local governments as "political subdivisions of the state" ([Russell & Bostrom](#), 2016, p. 2).

Home-Rule Municipalities

Rapid industrialization and urbanization caused many across the United States to question the role each level of government should play. By the turn of the 20th century, many state courts considered local governments to be "creatures of their state government" ([Hogen-Esch](#), 2011, p. 5). The growth of urban centers introduced the need for new governmental functions, which challenged the existing relationships between municipalities and state governments. As such, "State intervention in local affairs ... was the result of the need of cities for more revenue and authority to meet the demands of emergent urbanism" ([Baker](#), 1960, p. 85). Baker further notes that "reliance of the city upon the state became so great that virtually every municipal function was shared with the state in some way" (p. 85). Texas metropolitan regions continued to grow, and their inhabitants called for greater municipal authority and less state interference in local matters. As a result, "home rule charters emerged to grant cities greater authority to manage their own government structures, finances, and other 'municipal affairs'" ([Hogen-Esch](#), 2011, p. 5).

In 1913, the Texas Legislature passed House Bill 13, which allowed for the creation of what is now known as the home-rule municipality. HB 13 (1913, p. 1) allowed municipalities with more than 5,000 inhabitants to adopt and amend their charters, which would make the municipality a home-rule municipality. Home-rule municipalities in Texas are governed by Dillon's rule. The legislation granted larger cities greater autonomy by allowing them to engage in policymaking for matters not expressly prohibited by state law. For example, HB 13 allowed cities to assess and collect taxes, given that a home-rule municipality would not levy a tax that exceeds 2.5% of the city's taxable property (p. 1). Thus, the governance of a municipality—whether by Dillon's rule or home rule—was dependent on whether a city had at least 5,000 inhabitants and adopted a home-rule charter.

HB 13 enumerated many powers to municipalities that operate under their own charter, which included a provision that allowed for the involuntary annexation

of unincorporated lands. The act granted home-rule municipalities “the power to fix the boundary limits of said city to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city” (1913, p. 310). The enumerated powers also included “the power[s] to appropriate private property for public purposes whenever the governing authorities shall deem it necessary; [and] to take any private property within or [beyond] the city limits” (p. 312). Municipalities condemned private land through the power of eminent domain. Eminent domain allowed municipalities to construct various buildings, such as “city halls, police stations, [and] jails” (p. 312), in addition to infrastructure for public services, including “sewer systems, storm sewers, [and] sewage disposal plants” (p. 312).

The passage of Senate Bill 312 (1921) granted regulatory powers and zoning authority to home-rule municipalities. SB 312 allowed cities with more than 5,000 residents to divide their territory into zones or districts. Cities were allowed to “establish building lines within such zones...and may make different regulations for different districts” within their city (p. 1). Additionally, SB 312 allowed home-rule municipalities to “regulate the location, size, height, bulk and use of buildings within such zones or districts” (p. 1).

City Authority Expands: The Growth of Public Utility Services

Though the Texas Legislature established the Board of Water Engineers in 1913 (HB 37, 1913), regulatory authority over water services remained largely decentralized throughout Texas until the latter half of the 20th century. At its inception in 1913, “the major duties of the [Board of Water Engineers] were to approve plans concerning the organization of irrigation and water-supply districts, approve the issuance of bonds by such districts, issue permits for storage and diversion of water, and make plans for storage and use of floodwater” (TSHA, 1995). The board was renamed the Texas Water Commission in 1962 and renamed again in 1965 as the Texas Water Rights Commission.

Despite the board’s establishment, municipalities continued to oversee the development and governance of water utility services. In 1959, Thrombley noted, “Texas has no state ‘water plan,’ and no state agency has authority to establish a comprehensive policy for water use, control, or development” (p. 35). The Legislature enacted a series of reforms to grant municipalities greater control over water utilities.

- **Senate Bill 350 (1915)** enabled cities that own their waterworks system to condemn private property and provide “just compensation” *within* and *beyond* their corporate boundaries “for the purpose of digging or excavating canals, laying mains, [and] pipe lines” (p. 166). Through the power of eminent domain, municipalities acquired land outside of their incorporated boundaries to provide their own municipal citizens with public water services. Thus, this exercise of eminent domain benefited municipalities by infringing on the property rights of Texans living on unincorporated lands.
- **Senate Bill 120 (1923)** further expanded the ability of municipalities to exercise eminent domain beyond their corporate boundaries “for the extension, improvement or enlargement or [their] waterworks system” (p. 30). The bill allowed cities to condemn private property for “the construction of water supply reservoirs, wells or artesian wells and dams and the construction, building, erection or establishment of any necessary appurtenances.”
- **House Bill 751 (1943)** allowed cities with more than 350,000 inhabitants to annex additional territory beyond their corporate limits through the acquisition of land, including by exercising eminent domain authority. HB 751 allowed cities to annex land for many reasons, including “the extension, improvement and enlargement of its water system, including riparian rights, water supply reservoirs, standpipes, watersheds, dams, the laying, building, maintenance and construction of water mains” and the construction and maintenance of “parks, hospitals ... play grounds, airports, and landing fields, incinerators, garbage disposal plants, streets, boulevards and alleys or other public ways” (p. 2).

The bill also permitted cities to issue bonds and levy taxes for the acquisition and operation of annexed land. Municipalities were also granted policing powers in their new lands “to make and enforce rules and regulations” (p. 4).

City Authority Expands Again: Plans, Plats, and Replats

During the 1920s, the Legislature granted municipalities the ability to regulate land plats¹ beyond their incorporated boundaries, which allowed cities to control the development of land surrounding their incorporated

¹ The city of Carrollton (n.d.) defines a land plat as “A map of a subdivision that represents a tract of land, showing the boundaries and location of individual properties, streets, easements and other pertinent information” (p. 1). The alteration of a plat’s existing lot lines—known as a replat—also requires municipal approval.

boundaries. According to the Local Government Code, [Section 212.001\(2-3\)](#), “‘Plan’ means a subdivision development plan, including a subdivision plan, subdivision construction plan, site plan, land development application, and site development plan, [whereas a] ‘Plat’ includes a preliminary plat, general plan, final plat, and replat.” During the 1920s and the decades to follow, the expansion of municipal authority over land plats further subjected Texans residing within an unincorporated territory—outside of a municipality’s boundaries—to municipal authority. Prominent examples include:

- **Senate Bill 277 (1927)** required property owners to receive the approval of the city’s governing body or planning commission before subdividing their property into smaller tracts. SB 277 prohibited municipalities from providing utility services to properties—including plans, plats, and replats—within five miles of their municipal boundaries until said property received approval from the appropriate municipality ([section 8](#)).
- **House Bill 883 (1935)** enabled municipalities to annex by ordinance adjacent territory owned by the city or town into their corporate boundaries.
- **House Bill 751 (1943)** allowed municipalities to “issue negotiable warrants and bonds” for the acquisition of additional territory and maintenance of property within annexed lands ([p. 3](#)). HB 751 also allowed cities and counties to enact two different taxes: Local governments may levy a tax to repay the warrants and bonds, while the other tax further financed the maintenance and operation of properties within the newly acquired lands ([p. 3](#)). During the 48th regular session, HB 751 received the unanimous approval of both legislative chambers.
- **House Bill 168 (1949)** allowed cities with 5,000 inhabitants or less to annex unincorporated land within one half of a mile beyond their boundaries. Before an annexation could occur, the unincorporated land could not have been inhabited by more than two qualified voters, and the property owners of the incorporated land had to petition the municipality for annexation.
- **House Bill 244 (1953)** allowed home-rule cities—cities with more than 5,000 inhabitants—to annex land that is up to one half of a mile beyond its municipal boundaries upon the landowner’s request. The city may only annex the land if it is uninhabited or is inhabited by less than three qualified voters.
- **House Bill 691 (1955)** required property owners whose “land lies outside of and within five (5) miles of more than one (1) city” to receive the approval of each affected city before subdividing their property ([p. 851](#)). The bill also permitted larger cities to “enter into an agreement with any other city or cities affected” for the purpose of approving land plats.
- **House Bill 2370 (1985)** required that any property owner within the city limits or extraterritorial jurisdiction of a city with more than 1.5 million inhabitants file a development plat and receive approval from the city before developing their land. A development plan was not required when a property owner was required to file and receive approval for a subdivision plat.
- **House Bill 2900 (1997)** sought to ensure that property owners are not subject to the plat approval process by both a municipality and a country governing authority. Prior to the passage of HB 2900, landowners within an ETJ often had to petition for the approval of land plats with both the municipal and county governments.

The Municipal Annexation Act of 1963

The Establishment of Extraterritorial Jurisdiction

During its 58th regular session, the Texas Legislature passed House Bill 13 ([1963](#)), also known as the Municipal Annexation Act. Until 1963, the expansion of municipalities and regulation of lands beyond incorporated boundaries were governed by a disconnected patchwork of legislation. This patchwork included a series of legislative acts that gradually expanded the regulatory power of municipalities beyond their incorporated boundaries.

Purpose and Function of an ETJ

The Municipal Annexation Act of 1963 established the extraterritorial jurisdiction of municipalities “in order to promote and protect the general health, safety, and welfare of persons residing within and adjacent to the cities of this State” ([HB 13, 1963, p. 2](#)). The act was passed during a time of rapid population growth and urbanization across Texas and provided property owners of unincorporated areas with certain protections while granting cities “some means of controlling fringe development” ([MacCorkle, 1965, p. 35](#)). Hasty municipal expansion during the latter 20th century led to various urban problems and a lack of essential city services. Many municipalities in the Dallas–Fort Worth area lacked parks, libraries, and the proper infrastructure to provide their residents with water and sewer services ([Norwood, 1970, pp. 96–97](#)).

The growth of Texas cities and urban sprawl have been accredited to cities' "liberal use of annexation powers," according to a study conducted in 1965 (Norwood, 1970, p. 94). Texas municipalities accounted for 8 of the 22 cities that were designated "leaders in annexation". Furthermore, "Seven of the eight Texas cities listed at least doubled their land area during the decade 1950–1960" (p. 94). Thus, the Legislature created the extraterritorial jurisdiction to promote the responsible growth of municipalities and ensure residents of urbanized areas still received essential services.

Legislation enacted prior to 1963, such as HB 168 (1949), HB 244 (1953), and HB 691 (1955), determined how far cities could exercise certain powers beyond their corporate boundaries. The Municipal Annexation Act sought to simplify the existing set of laws relating to the governance of the state's unincorporated territories. HB 13 (1963) described "the unincorporated area, not a part of any other city, which is contiguous to the corporate limits of any city" as a municipality's "extraterritorial jurisdiction" (ETJ; p. 2). The bill established that the greater a municipality's population, the farther a city's ETJ would extend beyond its corporate boundaries (pp. 2-3). For example, the ETJ of cities with less than 5,000 inhabitants extended only one-half mile beyond their corporate boundaries, whereas the ETJ of cities with a population greater than 100,000 people extended five miles beyond their corporate boundaries. The act allowed cities to resolve land disputes that resulted from overlapping ETJs by entering into mutual agreements with one another.

HB 13 (1963, pp. 4–5) and current statute ([Local Government Code, Section 42.022](#)) provide for the expansion of a city's ETJ upon annexing unincorporated

Table 1
Extent of a Municipality's Extraterritorial Jurisdiction (ETJ)

Population	Extent of Extraterritorial Jurisdiction (ETJ)
Less than 5,000	0.5 miles
5,000 to less than 25,000	1.0 mile
25,000 to less than 50,000	2.0 miles
50,000 to less than 100,000	3.5 miles
100,000 and larger	5.0 miles

Note. This table is based on data from the Municipal Annexation Act, HB 13, 58th Texas Legislature, 1963 (<https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=146149&from=advancedsearch>).

land, which should expand in conformity to the municipal annexation. The population criteria that determine the extent of most extraterritorial jurisdictions remain unamended today ([Local Government Code, Section 42.021](#)).

Modern Municipal Authority

Current law prohibits municipalities from enforcing certain municipal ordinances within their ETJ, including "the bulk, height, or number of buildings constructed on a particular tract of land" and "the size of a building that can be constructed on a particular tract of land" ([Local Government Code, Section 212.003](#)). However, the Local Government Code still permits municipalities to enforce on their ETJ inhabitants rules and ordinances relating to

- land plats and the subdivision of land ([Sec. 212.002](#));
- the pumping, extraction, and use of groundwater ([Sec. 212.003](#));
- development plats ([Sec. 212.046](#));
- building permits ([Sec. 214.904](#));
- the relocation, reconstruction, or removal of signage ([Sec. 216.003](#)); and
- public nuisances ([Sec. 217.042](#)).

Annexation Limitations

In addition, the act limited the amount of land a municipality may annex from its ETJ. The act prohibited municipalities from growing their corporate boundaries by greater than 10% within a given year (pp. 7–8), while providing for certain exceptions. [Local Government Code, Section 43.055\(a\)](#), states:

In a calendar year, a municipality may not annex a total area greater than 10 percent of the incorporated area of the municipality as of January 1 of that year, plus any amount of area carried over to that year under Subsection (b). In determining the total area annexed in a calendar year, an area annexed for limited purposes is included, but an annexed area is not included if it is:

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

HB 13 also allowed municipalities to annex land of an amount that exceeded 10% of the municipality's incorporated boundaries. [Local Government Code, Sections 43.055 \(b\) and \(c\)](#), state:

(b) If a municipality fails to annex in a calendar year the entire 10 percent amount permitted under Subsection (a), the municipality may carry over the unused allocation for use in subsequent calendar years.

(c) A municipality carrying over an allocation may not annex in a calendar year a total area greater than 30 percent of the incorporated area of the municipality as of January 1 of that year.

Taxing Authority

As previously discussed, prior legislation like HB 751 (1943) allowed municipalities and counties to issue debt and levy taxes to finance the condemnation of private land within unincorporated territory, given that the private property would be used for public purposes. Although the Municipal Annexation Act (HB 13, 1963) provided some further protection, local government taxing authority in unincorporated areas remained vague and the subject of debate. For example, one provision of the act states, “No city shall impose any tax in the area under the extraterritorial jurisdiction of such city, by reason of including such area within such extraterritorial jurisdiction” (p. 5). This difficult-to-discern language has generated a range of different interpretations and methods of exactions.

Political Incorporation

The Municipal Annexation Act provided yet another mechanism for the incorporation of municipalities. HB 13 (1963) allowed for municipal incorporation located within the ETJ of another municipality upon receiving approval from the affected municipality's governing body (p. 9). If a municipality did not approve an incorporation within its ETJ, a majority of the ETJ inhabitants could force the city to annex them by petitioning the municipality. Otherwise, the municipality must allow for the incorporation of its ETJ inhabitants—ensuring ETJ inhabitants could receive municipal services either from the incorporated municipality or by establishing their own municipality. As previously discussed, Texas' first municipalities were incorporated via special laws by the Texas Congress and subsequent Texas Legislature. In 1858, the Legislature passed an act that allowed for towns and cities to incorporate under Texas' general laws (Gammel, 1898b, p. 941).

Regulatory Authority

House Bill 13 (1963) also reaffirmed the regulatory powers of municipalities within unincorporated areas. Additionally,

it affirmed the ordinance-making power of cities to regulate plats and the subdivision of all land within a city's extraterritorial jurisdiction (p. 5). Although municipalities could not impose fines on ETJ inhabitants to enforce their plat and land subdivision regulations, cities relied upon civil causes of action for enforcement.

Navigable Streams and Industrial Districts

In 1913, the Legislature declared it a “public necessity” that cities be granted “the authority and power to efficiently [regulate and] provide navigation, wharfage and facilities” and passed Senate Bill 298 (1913, pp. 47–48). SB 298 allowed municipalities located along a navigable stream to extend their corporate boundaries “for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks, warehouses or any other facilities” (p. 47). Municipalities were allowed to exercise eminent domain authority and convey property within the territory annexed for such limited purposes.

The Municipal Annexation Act then gave municipalities the authority to designate as industrial districts lands that were annexed for the limited purpose of stream navigation and wharfage (HB 13, 1963, p. 6). HB 13 allowed municipalities to force property owners within the industrial districts into contracts and agreements, which would grant immunity from general purpose annexation for a determined set of years.

Although cities were prohibited from levying property taxes on lands annexed for the limited purposes under SB 298 (1913, pp. 5–6), they could still collect money from property owners they forced into an industrial district contract. For example, in 1967, the Houston City Council established guidelines for property owners with which the city intended to enter into industrial district contracts. The guidelines, as described in *Houston Endowment, Inc. v. City of Houston*, provided that,

(1) as to land, an owner should annually pay the City a sum equal to that which would be paid in city ad valorem taxes if the city were within the general city limits, and

*(2) on property other than land, the owner should annually pay at a rate which would begin at a reduced or fractional percentage of the ad valorem tax which would be due if the property were within the general city limits and then increase on a graduated basis for the next five years until it equaled the tax rate on property within the general city limits. (*Houston Endowment, Inc. v. City of Houston*, 1971, p. 542)*

Although industrial districts were initially intended to provide regulation and oversight to the state's waterways, municipalities could still generate property tax revenue from land annexed for limited purposes. In 1967, the city of Houston had a "plan to annex and tax a 220-acre tract of unimproved land," which was not located within the general corporate boundaries of the city (*Houston Endowment, Inc. v. City of Houston*; 1971, p. 541). The tract of land "was annexed for the limited purpose of navigation and wharfage, but was not within [Houston's] general city limits" (p. 541). Thus, the land was said to be annexed for "limited purposes." Because the owner of the 220-acre tract refused to sign an industrial district contract with the city, the city sought to fully annex and tax the tract of land (p. 542). The landowner sought relief from the city's plan for annexation, but the city ultimately was allowed to annex the land (p. 543). *Houston Endowment, Inc. v. City of Houston* affirmed the right of municipalities to generate revenue from property owners who lived on land annexed for limited purposes (pp. 543–544). Thus, in certain cases like those involving land annexed for limited purposes if a property owner declines to enter into an industrial contract, a municipality could fully annex and tax a landowner's property without the property owner's consent.

Because industrial districts were sometimes located in the extraterritorial jurisdiction of multiple municipalities, municipalities sometimes laid claim to the same territory. As a result, the Legislature passed Senate Bill 716 (1985). The bill prohibited the creation of a political subdivision within the area of any industrial district or the annexation of land to encompass an industrial district without the prior written consent of the city that designated the industrial district.

ETJ Expansion Through Annexation

Although the Municipal Annexation Act limited the amount of land a city could annex within a given year, the act failed to place a limit on the growth of a city's ETJ.

The Municipal Annexation Act (HB 13, 1963) held that a city's extraterritorial jurisdiction would expand in conformity to a city's newly annexed lands. However, the act did not place a limit on the growth of a city's ETJ within a given year. Without such a limit, cities were motivated to annex certain lands for the sole purpose of expanding their ETJ. Senate Bill 749, enacted in response to this issue, "prohibit[ed] cities from annexing any narrow strip of territory for the sole purpose of expanding the extraterritorial jurisdiction of the city" (SB 749 Bill Analysis, 1973, p. 7). The bill prohibited cities from

annexing land with a width shorter than 500 feet at its narrowest point.

Two years later, the Legislature passed a bill (HB 1530, 1975) that exempted cities with less than 12,000 inhabitants from this critical safeguard, which enabled these cities to annex land solely to expand their ETJ.

The Legislature continued to pass measures to address issues resulting from creative and aggressive annexation strategies. Some of the legislation to be passed at the time includes:

- **House Bill 656 (1977)** prohibited a municipality from annexing only part of a municipal utility district. While HB 656 protected municipal utility districts (MUDs) from the confusion of partial annexation—resulting in different tax and water rates within the same water district—the bill's requirement that a city annex the entire water district sometimes allowed municipalities to annex land beyond their extraterritorial jurisdiction.
- **House Bill 1952 (1981)** ensured cities provide services to inhabitants of their annexed territories upon annexing the land. Whereas municipalities were previously required to provide residents of newly annexed lands with services that are "substantially equivalent to those furnished to similar areas in the city" (pp. 4–5), HB 1952 required a city to provide a service plan for the area it intended to annex. The service plan provided ETJ inhabitants with a greater voice during the annexation process and ensured they received services upon annexation. HB 1952 also required that two pre-annexation hearings take place. Prior law only required one hearing to take place.
- **House Bill 2247 (1985)** allowed municipalities to partially annex territory within a municipal utility district if the municipality received the consent of the MUD's governing board and the owners of the proposed territory to be annexed. Furthermore, the proposed territory could not be wider than 525 feet at its widest point.
- **House Bill 289 (1985)** required that a city make findings that it was in the public interest if it proposed to annex territory that would encircle unincorporated land without annexing it.

Limited-Purpose Annexation

While the Municipal Annexation Act guided how home-rule cities and general-law cities may exercise full annexation powers, little legislation existed pertaining to limited-purpose annexation. As a result, the Legislature passed Senate Bill 962 (1987), which granted annexation power to home-rule cities of over 225,000 inhabitants “for the limited purposes of applying its planning, zoning, health, and safety ordinances in the area” (p. 6). SB 962 required that a municipality prepare a report that contained a planning study and regulatory plan for the proposed territory before it could annex it. Specifics about the bill included the following:

- The **planning study** had to establish specific criteria to assess the necessity and impact of limited-purpose annexation, such as “the economic, environmental, and other impacts [of] the annexation” and “the proposed zoning of the area upon annexation” (SB 962, 1987, p. 8).
- The **regulatory plan** had to specify any regulations that would be imposed in proposed territory upon limited-purpose annexation and to determine when the city would annex the territory for full purposes. Within three years after a municipality executed limited-purpose annexation, the municipality had to fully annex the land or disannex the limited-purpose territory altogether (p. 8).
- During the years preceding full annexation, a municipality had to **take measures to prepare for the full annexation** of the territory. A municipality had to develop a land use and intensity plan, conduct a long-range financial forecast, and identify potential sources of funding for capital improvements within the territory (p. 9).
- Inhabitants of land annexed for limited purposes were eligible for officeholding, and they had **limited voting eligibility**. For example, a person could vote in a municipal election to elect or recall a city council member or mayor but was not allowed to vote in any bond election (p. 11).
- Senate Bill 962 permitted cities to “**impose reasonable charges**, such as building inspection and permit fees, on residents or real property owners for actions or procedures performed by the city” in the limited-purpose territory (pp. 11–12).

General-Law Cities and Clean-Up Measures

In 1970, the power of home-rule cities to annex land without the consent of the property owners was affirmed by the Texas Supreme Court in *Sitton v. City of Lindale* (1970). The court held, “since 1913 ‘home rule’ cities have continued to derive their power of annexation from their charters as authorized under Art. 1175, Sec. 2; and ‘general law’ cities since 1875 have continued to derive their power of annexation from Art. 974” (p. 941). However, starting in the 1990s, the Legislature expanded the annexing powers of general-law cities. The legislation also sought to address issues resulting from municipal annexation.

- **House Bill 985 (1991)** granted general-law municipalities the power to “annex adjacent territory without the consent of any residents or voters of the area and without the consent of any of the owners of land” in the proposed territory under certain circumstances (p. 1). For that purpose, a municipality needed to have at least 1,000 residents and to provide police and fire protection to residents within an annexed land if the municipality exercised involuntary annexation. The city also needed to provide annexed residents with water and sewer services.
- **House Bill 84 (1991)** allowed general-law municipalities to involuntarily annex public or private thoroughfares by ordinance. Home-rule municipalities already had the authority to annex private and public roadways, but HB 84 expanded this authority to general-law cities. HB 84 was passed because smaller municipalities needed the authority to annex streets and highways, which would allow greater access to other newly annexed land (HB 84 Bill Analysis, 1991, p. 1).
- **House Bill 811 (1993)** required that general-law municipalities provide inhabitants of an ETJ with either water or sewer services before annexing territory without the consent of the property owners. Prior to the passage of HB 811, general-law municipalities were required to provide only annexed residents with water and sewer services.
- **House Bill 2345 (1997)** permitted general-law municipalities to involuntarily annex adjacent territory within their ETJ if the service plan of a municipality required the city to provide the annexed residents the same level of services provided to current residents.

Dissatisfaction Grows

In 1994, the Texas House Committee on Urban Affairs (1994) provided recommendations to the 74th Texas Legislature to address municipal annexation practices. The most notable criticism from citizens regarding municipal annexation was how cities annexed land without the consent of the annexed residents. Whereas city officials regarded voter approval for annexation as an impediment to “orderly municipal development and growth” (p. 7), many citizens affected by involuntary annexation claimed municipalities annexed territory merely to increase their tax base.²

In 1998, the Texas Senate Interim Committee on Annexation (1998) reported how “citizens move into unincorporated areas to escape the higher property taxes and eroding services of the city” (p. 3). The committee also found that “the current annexation laws do not facilitate orderly annexation planning, fail to ensure a meaningful role in the annexation process for affected ETJ residents, and provide little assurance that newly annexed areas will receive appropriate services” (p. 4). The Legislature again passed measures to reform the governance of extraterritorial jurisdictions.

- **House Bill 2758 (1995)** allowed residents of an annexed territory to enforce the annexing city’s service plan, which required the full provision of city services to the area it annexed (p. 1).
- **Senate Bill 167 (1999)** required a seller of real property to provide a written notice to a purchaser if the land was subject to annexation.
- **Senate Bill 89 (1999)** included many provisions to increase the transparency of municipal annexation proceedings and ensure annexed residents received essential services. Under SB 89,
 - Cities had to prepare a municipal annexation plan before annexing land within their ETJ.
 - Home-rule cities with a population greater than 225,000 people could annex land for limited purposes, “regardless if [limited purpose annexation] was authorized in the home rule charter of the municipality” (SB 89 Bill Analysis, 1999, p. 9).
- Municipalities had to negotiate with property owners of an unincorporated area prior to annexation for the provision of services. Immediately upon annexing unincorporated territory, a municipality had to provide certain services to annexed residents, such as police and fire protection and emergency medical services (p. 2).
- **House Bill 610 (2007)** required municipalities to include in their service plan a full list of the municipal services it would provide to inhabitants of a newly annexed territory.

Turning Point

During its first called session, the 85th Texas Legislature passed Senate Bill 6 (2017), also known as the Texas Annexation Right to Vote Act (TARVA). SB 6 prevents certain cities from forcibly annexing landowners without their consent. SB 6 created two tiers to classify counties and cities based on the size of their population.

Tier 1 municipalities are cities located in counties with a population less than 500,000. Tier 2 municipalities include cities located in counties with a population of 500,000 or more (SB 6 Bill Analysis, 2017, p. 1)—only 11 out of the state’s 254 counties. SB 6 requires a “tier 2 municipality” to obtain consent via a public election on the question of annexation. SB 6 afforded those living in Texas’ 11 most populated counties a chance to participate in the democratic process and effectively ended the practice of involuntary municipal annexation (Pierce, 2017). For those living in Texas’ remaining 243 counties, SB 6 allowed for 10% of the registered voters of the county to petition the county commissioners court to hold an election seeking inclusion.

TARVA’s creation of a two-tier system treated property owners differently based on the size of their community’s population (Quintero, 2019). The 86th Texas Legislature amended TARVA with the passage of House Bill 347 (2019). HB 347 eliminated the distinction between Tier 1 and Tier 2 cities and counties for consent annexation. “Like all governments, cities derive their authority from the people who formed them. ... No city should force annexation onto people residing outside its limits without first getting their consent” (Quintero, 2019, “Talking Points” section). HB 347 effectively ended the brand of taxation without representation that was allowed by involuntary annexation.

² The Texas Municipal League (2015) acknowledged as much by stating: “Most cities annex for two basic reasons: (1) to control development; and/or (2) to expand the city’s tax base” (p. 2).

Future Reforms

The voluntary nature of municipal annexation merits a reevaluation of extraterritorial jurisdiction and the purposes an ETJ serves. Municipalities should not have regulatory authority beyond their incorporated limits. Municipalities previously justified the enforcement of municipal regulations by claiming that extraterritorial jurisdiction would be annexed to the municipality. However, because the annexation of an ETJ now requires voter approval, such unincorporated territory may never become part of the municipality. As such, except when provided through mutual agreements, municipalities should not retain the ability to involuntarily enforce their municipal regulations outside of city limits.

Abolish the Extraterritorial Jurisdiction

Extraterritorial jurisdictions across the state remain governed by a patchwork of legislative acts scattered throughout the Local Government Code. For example, counties and municipalities both have the authority to regulate subdivisions and approve related permits within an ETJ ([Sec. 242.001\(c\)](#)) in the absence of an interlocal agreement between the county and municipality. The concurrent authority shared by counties and municipalities leads to burdensome regulations on property owners who wish to develop their land as the filing of a plat may be subject to both municipal and county approval ([Sec. 242.001\(h\)](#)).

Conclusion

Since the founding of Texas, great progress has been made to secure Texans' right to life, liberty, and property. Inhabitants of unincorporated lands must no longer rely upon special acts of the Legislature for municipal incorporation. Though the Legislature has allowed municipalities greater self-autonomy from the state government, the Legislature must ensure each Texan's right to self-determination is protected. This includes the right of Texans to choose where they live, including whether to live within the boundaries of a municipality.

The extraterritorial jurisdiction was created to ensure the orderly growth and development of land that would soon become part of a municipality. Municipalities justified their extension of ordinance regulation beyond their incorporated boundaries with the presumption that they would eventually annex the unincorporated land. Given the now-voluntary nature of municipal annexation, as achieved through recent legislative efforts, the extraterritorial jurisdiction no longer serves its intended purpose. As such, the extraterritorial jurisdiction merely enables municipalities to exercise certain regulatory powers over inhabitants of unincorporated lands who may never be annexed by the municipality.

Many Texans decide to live in an unincorporated land to avoid municipal regulation and taxation. As such, municipalities should not be expected to “promote and protect the general health, safety, and welfare of persons” who reside outside of their city limits ([Local Government Code, Section 42.021](#)). Unincorporated residents must not be subject to regulation or taxation without representation. The concept of extraterritorial jurisdiction no longer serves its intended purpose and should be abolished. ★

References

- Baker, B. (1960). Municipal autonomy: Its relationship to metropolitan government. *The Western Political Quarterly*, 13(1), 83–98. <https://doi.org/10.2307/444337>
- Beltran, J. (2015, February 14). Cholera epidemics killed at least 700 in 1800s. *San Antonio Express-News*. <https://www.expressnews.com/150years/education-health/article/Cholera-epidemics-killed-at-least-700-in-1800s-6081967.php>
- Bureau of International Information Programs. (2011). *Declaration of the Rights of Man*. https://static.america.gov/uploads/sites/8/2016/05/Words-of-Freedom-Series_Human-Rights_Declaration-of-the-Rights-of-Man_English_508-1.pdf
- Burns, C. R. (2020). Epidemic diseases. In H.G. Wooten (Ed.), *Handbook of Texas*. Retrieved August 8, 2021, from <https://www.tshaonline.org/handbook/entries/epidemic-diseases>
- Chengdan, Q. (2010). Transformation of European states: From feudal to modern. *Procedia - Social and Behavioral Sciences*, 2(5), 6683–6691. <https://doi.org/10.1016/j.sbspro.2010.05.013>
- City of Carrollton. (n.d.). *Top ten frequently asked questions about plats*. Retrieved September 21, 2021, from <http://www.cityofcarrollton.com/Home/ShowDocument?id=2251>
- Committee on Urban Affairs. (1994). *Interim report to the 74th Texas Legislature*. Texas House of Representatives. <https://lrl.texas.gov/scanned/interim/73/ur1.pdf>
- Davidson, N. M. (2021). Local constitutions. *Texas Law Review*, 99(5), 839–906. <https://texaslawreview.org/wp-content/uploads/2021/04/Davidson.Printer.pdf>
- Department of State Health Services. (2021, March 2). *Cholera*. <https://www.dshs.texas.gov/IDCU/disease/vibrio/Cholera.aspx>
- Doernberg, D. L. (1985). “We the People”: John Locke, collective constitutional rights, and standing to challenge government action. *California Law Review*, 73(1), 52–118. <https://doi.org/10.2307/3480464>
- Fields, J., & Quintero, J. (2015). *Ending forced annexation in Texas* [Policy brief]. Texas Public Policy Foundation. <https://files.texaspolicy.com/uploads/2018/08/16101639/Ending-Forced-Annexation-in-Texas.pdf>
- Gaba, J. M. (2007). John Locke and the meaning of the Takings Clause. *Missouri Law Review*, 72(2), <https://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3727&context=mlr>
- Gammel, H. P. N. (1898a). *The laws of Texas, 1822-1897* (Vol. 1). The Gammel Book Company. <https://texashistory.unt.edu/ark:/67531/metaph5872/>
- Gammel, H. P. N. (1898b). *The laws of Texas, 1822-1897* (Vol. 4). The Gammel Book Company. <https://texashistory.unt.edu/ark:/67531/metaph6730/>
- Gammel, H. P. N. (1898c). *The laws of Texas, 1822-1897* (Vol. 8). The Gammel Book Company. <https://texashistory.unt.edu/ark:/67531/metaph6731/>
- Green, N. L. (2009). Expatriation, expatriates, and expats: The American transformation of a concept. *The American Historical Review*, 114(2), 307–328. <https://doi.org/10.1086/ahr.114.2.307>
- Grumm, J. G., & Murphy, R. D. (1974). Dillon’s rule reconsidered. *The Annals of the American Academy of Political and Social Science*, 416, 120–132. <http://www.jstor.org/stable/1041787>

- HB 13. Enrolled. 33rd Texas Legislature. Regular. (1913). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=33-0&billTypeDetail=HB&billNumberDetail=13&submitButton=Search+by+bill>
- HB 13. Enrolled. 58th Texas Legislature. Regular. (1963). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=146149&from=advancedsearch>
- HB 37. Enrolled. 33rd Texas Legislature. Regular. (1913). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=33-0&billTypeDetail=HB&billNumberDetail=37&submitButton=Search+by+bill>
- HB 84. Enrolled. 72nd Texas Legislature. Regular. (1991). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=72-0&billTypeDetail=HB&billNumberDetail=84&submitButton=Search+by+bill>
- HB 84 Bill Analysis. Senate Research Center. 72nd Texas Legislature. Regular (1991, May). <https://lrl.texas.gov/scanned/srcBillAnalyses/72-0/HB84ENG.pdf>
- HB 168. Enrolled. 51st Texas Legislature. Regular. (1949). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=51-0&billtypeDetail=HB&billNumberDetail=168&billSuffixDetail=>
- HB 244. Enrolled. 53rd Texas Legislature. Regular. (1953). <https://lrl.texas.gov/legis/BillSearch/BillDetails.cfm?legSession=53-0&billTypeDetail=HB&billNumberDetail=244&submitButton=Search+by+bill>
- HB 289. Enrolled. 69th Texas Legislature. Regular. (1985). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=80503&from=advancedsearch>
- HB 347. Enrolled. 86th Texas Legislature. Regular. (2019). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB347>
- HB 390. Enrolled. 14th Texas Legislature. 2nd Called Session. (1875). https://lrl.texas.gov/scanned/sessionLaws/14-2/CH_C.pdf
- HB 610. Enrolled. 80th Texas Legislature. Regular. (2007). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=80R&Bill=HB610>
- HB 656. Enrolled. 65th Texas Legislature. Regular. (1977). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=100834&from=advancedsearch>
- HB 691. Enrolled. 54th Texas Legislature. Regular. (1955). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=174933&from=advancedsearch>
- HB 751. Enrolled. 48th Texas Legislature. Regular. (1943). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=48-0&billtypeDetail=HB&billNumberDetail=751&billSuffixDetail=>
- HB 811. Enrolled. 73rd Texas Legislature. Regular. (1993). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=73R&Bill=HB811>
- HB 883. Enrolled. 44th Texas Legislature. Regular. (1935). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=44-0&billtypeDetail=HB&billNumberDetail=883&billSuffixDetail=>
- HB 985. Enrolled. 72nd Texas Legislature. Regular. (1991). <https://lrl.texas.gov/legis/BillSearch/BillDetails.cfm?legSession=72-0&billtypeDetail=HB&billNumberDetail=985&billSuffixDetail=>

- HB 1530. Enrolled. 64th Texas Legislature. Regular. (1975). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=105827&from=advancedsearch>
- HB 1952. Enrolled. 67th Texas Legislature. (1981). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=93775&from=advancedsearch>
- HB 2247. Enrolled. 69th Texas Legislature. Regular. (1985). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=69-0&billtypeDetail=HB&billNumberDetail=2247&billSuffixDetail=>
- HB 2345. Enrolled. 75th Texas Legislature. Regular. (1997). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=75R&Bill=HB2345>
- HB 2370. Enrolled. 69th Texas Legislature. Regular. (1985). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=69-0&billtypeDetail=HB&billNumberDetail=2370&billSuffixDetail=>
- HB 2758. Enrolled. 74th Texas Legislature. Regular. (1995). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=74R&Bill=HB2758>
- HB 2900. Enrolled. 75th Texas Legislature. Regular. (1997). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=75-0&billtypeDetail=HB&billNumberDetail=2900&billSuffixDetail=>
- Hobsbawm, E. (1996). *The age of revolution, 1789–1848*. Vintage Books. http://www.andallthat.co.uk/uploads/2/3/8/9/2389220/eric_hobsbawm_-_age_of_revolution_1789_-1848.pdf
- Hogen-Esch, T. (2011). Fragmentation, fiscal federalism, and the ghost of Dillon's rule: Municipal incorporation in southern California, 1950-2010. *California Journal of Politics and Policy*, 3(1), 1–23. <https://doi.org/10.5070/P2JW2Q>
- Houston Endowment, Inc. v. City of Houston*, 468 S.W.2d 540 (1971). <https://casetext.com/case/houston-endowment-v-hou>
- Interim Committee on Annexation. (1998). Interim report: 76th Legislature. Texas Senate. <https://lrl.texas.gov/scanned/interim/75/an76.pdf>
- Jefferson, T., Rind, C., Jefferson, T., American Imprint Collection & Thomas Jefferson Library Collection. (1774). *A summary view of the rights of British America: Set forth in some resolutions intended for the inspection of the present delegates of the people of Virginia, now in convention*. [Williamsburg Va.: Printed by Clementina Rind] Retrieved from the Library of Congress, <https://www.loc.gov/item/08016823/>.
- Locke, J. (1980). *Second treatise of government* (Macpherson, C. B., Ed.). Hackett Publishing Company, Inc. (Original work published 1690).
- MacCorkle, S. A. (1965). *Municipal annexation in Texas / Stuart A. MacCorkle*. Institute of Public Affairs, the University of Texas.
- Madison, J. (1788a, January 23). *Federalist* No. 43. National Archives. <https://founders.archives.gov/documents/Madison/01-10-02-0248>
- Madison, J. (1788b, January 26). *Federalist* No. 45. National Archives. <https://founders.archives.gov/documents/Madison/01-10-02-0254>

- Merriam v. Moody's Executors*, 25 Iowa 163 (1868). [https://cite.case.law/pdf/119054/Merriam%20v.%20Moody's%20Executors,%2025%20Iowa%20163%20\(1868\).pdf](https://cite.case.law/pdf/119054/Merriam%20v.%20Moody's%20Executors,%2025%20Iowa%20163%20(1868).pdf)
- Morton, A. D. (2005). The age of absolutism: Capitalism, the modern states-system and international relations. *Review of International Studies*, 31(3), 495–517. <http://www.proquest.com/docview/204898527/abstract/71A089BBEEE34533PQ/1>
- Nackman, M. E. (1974). Anglo-American migrants to the West: Men of broken fortunes? The case of Texas, 1821–46. *The Western Historical Quarterly*, 5(4), 441–455. <https://doi.org/10.2307/967308>
- Norwood, R. E. (1970). *Texas county government: Let the people choose* / by Robert E. Norwood. Texas Research League.
- Pierce, A. (2017, December 1). New annexation law means liberty for many Texans [Press release]. <https://www.texaspolicy.com/press/new-annexation-law-means-liberty-for-many-texans>
- Quintero, J. (2019, April 25). *HB 347 testimony before the Texas Senate Committee on State Affairs*. <https://www.texaspolicy.com/hb-347-testimony-before-the-texas-senate-committee-on-state-affairs/>
- Russell, J. D. & Bostrom, A. (2016). *Federalism, Dillon rule, and home rule* [White paper]. American City County Exchange. <https://www.alec.org/app/uploads/2016/01/2016-ACCE-White-Paper-Dillon-House-Rule-Final.pdf>
- SB 6. Enrolled. 85th Texas Legislature. First Called Session. (2017). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=851&Bill=SB6>
- SB 6 Bill Analysis. House Research Organization. 85th Texas Legislature. First Called Session (2017, August). <https://hro.house.texas.gov/pdf/ba851/sb0006.pdf#navpanes=0>
- SB 89. Enrolled. 76th Texas Legislature. Regular. (1999). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=76R&Bill=SB89>
- SB 89 Bill Analysis. House Research Organization. 76th Texas Legislature. Regular. (1999, May). <https://hro.house.texas.gov/pdf/ba76r/sb0089.pdf#navpanes=0>
- SB 120. Enrolled. 38th Texas Legislature. Regular. (1923). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=38-0&billtypeDetail=SB&billNumberDetail=120&billSuffixDetail=>
- SB 167. Enrolled. 76th Texas Legislature. Regular. (1999). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=76R&Bill=SB167>
- SB 277. Enrolled. 40th Texas Legislature. Regular. (1927). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=40-0&billTypeDetail=SB&billnumberDetail=277&submitbutton=Search+by+bill>
- SB 298. Enrolled. 33rd Texas Legislature. (1913). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=33-0&billTypeDetail=SB&billnumberDetail=298&submitbutton=Search+by+bill>
- SB 312. Enrolled. 37th Texas Legislature. Regular. (1921). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=37-0&billtypeDetail=SB&billNumberDetail=312&billSuffixDetail=>
- SB 350. Enrolled. 34th Texas Legislature. Regular. (1915). <https://lrl.texas.gov/legis/billsearch/BillDetails.cfm?legSession=34-0&billtypeDetail=SB&billNumberDetail=350&billSuffixDetail=>

- SB 716. Enrolled. 69th Regular Session. (1985). <https://lrl.texas.gov/legis/billsearch/billdetails.cfm?billFileID=81430&from=advancedsearch>
- SB 749. Enrolled. 69th Texas Legislature. Regular. (1973). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=63-0&billTypeDetail=SB&billNumberDetail=749&billSuffixDetail=>
- SB 749 Bill Analysis. House Committee Report. 69th Texas Legislature. Regular (1973, May). https://lrl.texas.gov/LASDOCS/63R/SB749/SB749_63R.pdf
- SB 962. Enrolled. 70th Texas Legislature. Regular. (1987). <https://lrl.texas.gov/legis/billSearch/BillDetails.cfm?legSession=70-0&billTypeDetail=SB&billnumberDetail=962&submitbutton=Search+by+bill>
- Schlereth, E. R. (2015). Voluntary Mexicans: Allegiance and origins of the Texas Revolution. In Haynes, S.W., & Saxon, G.D. (Eds.), *Contested empire: Rethinking the Texas Revolution* (pp. 11-41). Texas A&M University Press.
- Siegan, B. H. (2001). *Property rights: From Magna Carta to the Fourteenth Amendment* (1st ed.). Routledge. <https://doi.org/10.4324/9781351325967>
- Sitton v. City of Lindale*, 455 S.W.2d (1970). <https://casetext.com/case/sitton-v-city-of-lindale>
- Stern, K. D.. (1966). John Locke and the Declaration of Independence. *Cleveland State Law Review*, 15(1), <https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=3019&context=clevstrev>
- Stetson v. Kempton*, 13 Mass. 272. (Mass. 1816). <https://cite.case.law/mass/13/272/>
- Stuntz, J. A. (2005). *Hers, his, and theirs: Community property law in Spain and early Texas* (1st ed). Texas Tech University Press.
- Texas State Historical Association. (1995, June1). *Handbook of Texas: Board of Water Engineers*. Retrieved September 22, 2021, from <https://www.tshaonline.org/handbook/entries/board-of-water-engineers>
- Texas Municipal League. (2015, January). *Municipal annexation in Texas: The “basics.”* <https://texascityattorneys.org/wp-content/uploads/2016/01/Annexation-cheat-sheet-paper-updated-February-2015.pdf>
- Texas State Library and Archives Commission. (n.d.). *Texas Declaration of Independence, March 2, 1836*. Retrieved September 16, 2021, from <https://www.tsl.texas.gov/exhibits/texas175/declaration.html>
- Thrombley, W. G. (1959). *Special districts and authorities in Texas*. Institute of Public Affairs, University of Texas.
- U.S. National Archives and Records Administration. (n.d.-a). *Declaration of Independence: A transcription*. Retrieved September 16, 2021, from <https://www.archives.gov/founding-docs/declaration-transcript>
- U.S. National Archives and Records Administration. (n.d.-b). *Featured document: The Magna Carta*. Retrieved September 16, 2021, from http://www.archives.gov/exhibits/featured_documents/magna_carta/
- Vile, J.R. (n.d.). *Magna Carta*. The First Amendment encyclopedia. Retrieved September 21, 2021, from <https://www.mtsu.edu/first-amendment/article/867/magna-carta>

- Weber, D. J. (1996). *Foreigners in their native land: Historical roots of the Mexican Americans* (1st ed). University of New Mexico Press.
- Whelan, F. G. (1981). Citizenship and the right to leave. *The American Political Science Review*, 75(3), 636–653.
<https://www.jstor.org/stable/1960958>

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