

# TRAIL OF TIERS

## Introduction

From 1836 to 1850 the U. S. Government's policy was to force the various American Indian Civilized Tribes to relocate, on foot, to lands west of the Mississippi River. Most ended up in Indian Territory now known as Oklahoma. The journey was so arduous that over 10,000 Indians died on the way. The trek became known as the Trail of Tears. History now repeats itself after a fashion as the 85<sup>th</sup> Texas Legislature has forced cities "onto the reservation" by ending annexation as we know it.

Historically, home rule cities could annex property within their extra-territorial jurisdiction (with few exceptions) unilaterally without the permission of the land owners. This power is now gone. Home rule cities can now only annex under three main categories:

1. On the request of an owner.
2. For areas under 200 in population by petition.
3. For areas over 200 in population by election.

However, there remains one exception found in Section 43.0751 of the Texas Local Government Code (LGC) for Strategic Partnership Agreements (SPA).

### I. What has the Legislature Wrought?

The Legislature made changes to Chapter 43 of the Texas Local Government Code in the following areas:

- General authority to annex:
  - Enclaves (43.0115).
  - Industrial Districts (43.0116).
  - Near military bases (43.0117).
- General Law cities to:
  - Annex area it owns (43.012).
  - Navigable stream (43.013).
- Municipal annexation under plan for Tier 1 municipality (Subchapter C).

- Annexation of areas exempted from plan for Tier 1 (Subchapter C-1).
- General authority to annex Tier 2 (Subchapter C-2).
- Annexation upon request of owners Tier 2 (Subchapter C-3).
- Annexation less than 200 population Tier 2 (Subchapter C-4).
- Annexation of at least 200 population Tier 2 (Subchapter C-5).
- Annexation of municipality owned Reservoir (43.101).
- Annexation of streets, highways and other ways general law city Tier 1 (43.103).
- Annexation of Roads and ROW in certain large counties (43.1055).
- Limited Purpose Annexation Tier 2 cities (43.1211).
- Effect of annexation on public entities or political subdivision (43.9051).
- Enforcement (43.908).
- Special District local laws (beat up Austin).

Below is a discussion of the more important provisions relating mainly to home rule Tier 2 cities.

## **II. Tiers**

Senate Bill 6 segregates counties and cities by population into various tiers:

1. A county with less than 500,000 in population is a Tier 1 county.
2. A Tier 2 county is a county that is not a Tier 1 county:
  - a. unless an election has been held to be treated as a Tier 2 county. The registered voters of the county can call an election if 10% of the registered voters petition to do so. (43.001).
3. Cities are Tier 1 if they are in a Tier 1 county and are annexing in a Tier 1 county.
4. A Tier 2 city is one at least partially located in a Tier 2 county or is annexing in a Tier 2 county.

## **III. Industrial Districts**

Section 43.0116 restricts annexation of an industrial district to after the industrial district contract expires including extensions or as provided in the contract.

#### **IV. Agriculture, Wildlife Management or Timberland**

To annex an area under Section 43.016 that is appraised for tax purposes as agriculture, wildlife management or timberland applies only to an area:

1. Eligible to be the subject of a development agreement under Local Government Code Chapter 212.
2. The city offers to make a development agreement with the landowner that guarantees the continuation of the ETJ status of the area and authorizes the enforcement of all regulations and planning authority of the city that does not interfere with the tax status of the area.
3. The landowner declines to make the agreement described by Subdivision (1).

An area adjacent or contiguous under a development agreement is considered adjacent or contiguous to the city. A development agreement is void if the landowner files any type plat or other development document. A development agreement is not a permit for vesting purposes.

#### **V. Subchapter C-2. General Annexation Authority Tier 2**

Section 43.0661 applies to Tier 2 cities and prohibits the cancelation of a private garbage collection service for 2 years after annexation if the city has a municipal garbage service. A city is not required to provide garbage collection service.

#### **VI. Subchapter C-3. Annexation on Request of Owners: Tier 2**

Section 43.067 et seq. allows for annexation if each owner of land in the area requests the annexation.

The procedure requires:

1. A written agreement regarding services to be provided. Such list must include a list of each service the city will provide and a schedule that includes the period within which the city will provide each service that is not provided on the effective date of the annexation.

The city is not required to provide a service not listed in the agreement.

Public hearings have changed and now hearings cannot be held on the same day. To annex requires two public hearings at least 10 business days apart. The first public hearing must provide for public comment but in the second hearing an ordinance annexing the land may be adopted.

Notice must be posted on the city's website and published in a newspaper at least once on or after the 20<sup>th</sup> day but before the 10th day before the hearing. This is required for each hearing.

## **VII. Subchapter C-4. Annexation of Areas with Population Less Than 200: Tier 2**

A city may annex an area with less than 200 population only if:

1. Consent is given in a petition signed by more than:
  - a. 50% of the registered voters of the area.
  - b. If the registered voters do not own more than 50% of the land.
  - c. The petition described by 1.a. is signed by more than 50% of the landowners in the area.
2. Procedurally the city must first:
  - a. Adopt a resolution of annexation that includes:
    - i. Statement of intent.
    - ii. Detailed description and map of the area.
    - iii. Description of each service to be provided on or after the effective date of the annexation, including:
      1. Police.
      2. Fire.
      3. Emergency medical.
      4. Solid waste collection.
      5. O&M of water and wastewater facilities.
      6. O&M of roads and streets including lighting of same.
      7. O&M of parks, playgrounds and swimming pools.
      8. Operation and maintenance of other publicly owned facility, building or service.
    - iv. List of each service to be provided on the effective date.
    - v. A schedule of each service that will not be provided on the effective date.

- b. Notice:
  - i. Within 7 days of the adoption of the resolution the city must:
    - 1. Mail to each resident and property owner notification of the proposed annexation which includes:
      - a. Notice of the public hearing(s).
      - b. Explanation of 180-day protest petition period (43.0685).
      - c. List and schedule of services to be provided by the city in the area on or after annexation.
- c. Public Hearing:
  - i. Public hearing between the 21<sup>st</sup> day and 30<sup>th</sup> day after adoption of resolution by governing body.
- d. Petition for annexation:
  - i. Signed by registered voters unless:
    - 1. They do not own more than 50% of land in the area; then owners of land in the area that are not registered voters may sign.
    - 2. Clearly indicate person is a registered voter, an owner of land or both.
    - 3. May only collect signatures during period:
      - a. Beginning on the 31<sup>st</sup> day after adoption of resolution by governing body.
      - b. Ending on 180<sup>th</sup> day after resolution adoption.
    - 4. Must clearly state person is consenting to annexation.
    - 5. Must include a map and description of area.
    - 6. Signatures must be in writing.
- e. Results of Petition:
  - i. Signatures verified by city secretary at end of petition period.
  - ii. The city must notify residents and property owners of results.
  - iii. If number of required signatures on petition isn't met, then city may not adopt another resolution until 1 year from end of petition period.
  - iv. If petition prevails with required number of signatures, then city annexes after:
    - 1. Notifying voters and landowners.

2. Holding 2 public hearings:
  - a. First public hearing provides for public comment.
  - b. Second public hearing not before 10<sup>th</sup> day after 1<sup>st</sup> public hearing [in 2.a. above], at which annexation ordinance of area may be adopted.
- f. Protest petition (43.0697):
  - i. If protest petition containing at least 50% of the number of voters who voted in last municipal election.
  - ii. Received by city secretary before petition period ends (43.0685).
  - iii. Then must have election approving annexation.
- g. Retaliation prohibited.

### **VIII. Timeline**

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| Day 1      | Adopt annexation resolution.  |
| Day 8      | Mail notice of intent to annex, within 7 days of adoption of resolution including notice for public hearings, protest period. |
| Day 21-30  | 1 <sup>st</sup> public hearing.   |
| Day 31-180 | Collection of signatures on petition.   |
| Day 180    | If receive protest petition must hold election.   |
| Day 181+   | Notify of result of petition.   |
| Day 365    | If petition fails then wait one year from Day 180.  |
| Day 181+   | At least 10 business days from 1 <sup>st</sup> public hearing conduct 2 <sup>nd</sup> public hearing and adopt ordinance.     |

## **IX. C-5 Annexation of Area With At Least 200 Population: Tier 2**

A city may annex an area with at least 200 population only if (43.0691):

1. The city holds an election in the area proposed to be annexed and the proposition is adopted by a majority vote.
  - a. If registered area voters do not own more than 50% of land in area to be annexed then:
    - i. City must obtain consent by signature on a petition of more than 50% of the owners of the land.
2. Procedurally (43.0692) the city must first adopt a resolution that includes:
  - a. A statement of intent to annex.
  - b. A detailed description and map.
  - c. A description of each service to be provided by city in annexed area on effective date of annexation including:
    - i. Police.
    - ii. Fire.
    - iii. EMS.
    - iv. Garbage.
    - v. O&M of water and wastewater facilities.
    - vi. O&M of roads and streets including lighting of same.
    - vii. O&M parks, playgrounds and swimming pools.
    - viii. O&M of any other publicly owned facility, building or service.
  - d. A list of each service to be provided on effective date of annexation.
  - e. Schedule of future services.
3. Notice (43.0693):
  - i. By the 7<sup>th</sup> day of adoption of resolution city must:
    - i. Mail to each property owner proposed to be annexed a notice that includes:
      - a. Notice of public hearing(s).
      - b. Notice of election on the question of annexing the area.
      - c. Description, list and schedule of services to be provided on or after annexation.
4. Public Hearing (43.0694):

- i. 1<sup>st</sup> Public Hearing:
    - a. Between the 21<sup>st</sup> and 30<sup>th</sup> day after adoption of resolution.
  - ii. 2<sup>nd</sup> Public Hearing:
    - i. Between the 31<sup>st</sup> and 90<sup>th</sup> day after adoption of resolution.
5. Owner Consent:
- i. If registered voters in the area proposed to be annexed do not own more than 50% of area then:
    - i. Only through petition process must obtain:
      - a. More than 50%
      - b. Of land owners signature
      - c. Petition must be verified per 43.0686(a) (verification by city secretary and notification of results of petition to voters and landowners).
6. Election (43.0696):
- a. Must order election for 1<sup>st</sup> uniform election date on or after:
    - i. 90 days from adoption of resolution or
    - ii. If landowner consent required, then 78<sup>th</sup> day after petition period ends.
    - iii. City pays.
    - iv. If lose, then 1 year waiting period (assuming for that area).
  - b. Results (43.0697):
    - i. Must notify residents and landowners of results:
      - i. If lose, or not get required signatures, then 1 year waiting period from anniversary of adoption of petition.
      - ii. If win, then annex after:
        - a. Providing notice.
        - b. Holding 1<sup>st</sup> public hearing with public comment.
        - c. Hold 2<sup>nd</sup> public hearing 10 days after 1<sup>st</sup> public hearing.
        - d. Annex at 2<sup>nd</sup> public hearing.
  - c. Protest Petition:
    - i. Signed by at least 50% of voters who voted in last municipal election.
    - ii. Received by city secretary before election day.
    - iii. Must have election and approval by majority vote.

- d. No retaliation (43.0699):
  - i. Not affect existing legal obligation to provide services.
  - ii. Not initiate rate proceeding.

**X. Timeline**

- Day 1            Adopt resolution of intent to annex.
  - Day 8            Mail notice to each voter and landowner.
  - Day 21-30      1<sup>st</sup> public hearing on annexation after adoption of resolution.
  - Day 31-90      2<sup>nd</sup> public hearing.
  - Day 90           Call election for next May or November uniform election day if voters equal more than 50% of landowners if not then by petition also for 78 days after petition period ends for landowner signatures.
- Election day May or November.
- Election day Receive protest petition must have election.
- Day 365        If lose, wait one year from adoption date of petition.
  - Day            Notify public of election results.
  - Day            1<sup>st</sup> public hearing.
  - Day plus 10 days after 1<sup>st</sup> public hearing      2<sup>nd</sup> public hearing adopt annexation ordinance

**XI. Section 28. Strategic Partnership Agreement**

Section 43.0751(h) provides if terminating a SPA, then proceed with full-purpose annexation under Tier 1 procedures or under SPA provisions. This is the easiest way to annex. A SPA agreement should have a full purpose annexation conversion date set forth in the agreement. Once that date is past and if the SPA agreement has not been terminated then the land with the boundaries of the SPA

is DEEMED to be within the full purpose boundary limits of the city without further action by the city.

**XII. Section 43.9051. Effect of Annexation on Public Entities or Political Subdivisions**

“Public Entity” includes:

1. County.
2. Fire protection service provider.
3. Volunteer fire department.
4. EMS.
5. Volunteer EMS provider.
6. Special district.

Notice provided to public entity as for 1<sup>st</sup> public hearing

If entering into SPA, written notice of proposed agreement, providing notice of first hearing to each political subdivision in area.

Contents must include description of:

1. Area proposed for annexation.
2. Any financial impact on public entity, including changes in revenues or M&O cost.
3. Proposal to abate, reduce or limit financial impact.
4. May not proceed with annexation until it provides notice.

**XIII. Section 43.908. Enforcement**

1. Mandamus.
2. Declaratory judgment.
3. Injunctive relief.
4. Immunity from suit waived.

Court may award court costs and attorney’s fees.