



# LEGISLATOR'S GUIDE TO THE ISSUES 2021-2022

## Extraterritorial Jurisdiction Reform

### The Issue

The history of municipal annexation and extraterritorial jurisdictions (ETJs) are closely aligned. In the 1940s and 1950s, Houston and Pasadena were aggressively and forcibly annexing neighboring areas, which they could do right up to the corporate boundaries of a neighboring city. In response, the state of Texas reformed the annexation process by enacting the Municipal Annexation Act of 1963. The revamped system allowed municipalities to continue forcibly annexing; however, those actions were limited to certain geographic areas of unincorporated territory contiguous to the city's corporate borders, that is, its ETJ.

The size of this "buffer zone" ranges from one half mile to five miles, depending on the number of city inhabitants. In an ETJ, cities commonly impose certain regulations, like signage and fireworks restrictions, and derive revenue, as with impact fees. By state law, a city's ETJ can only expand through annexation, landowner request, or an increase in the city's number of inhabitants.

An ETJ moves concurrently with a city's corporate boundaries. Because of this, property owners residing in an unincorporated area near a home-rule city sometimes find themselves captured without knowing it, thereby becoming subject to new rules and regulations. The 86th Legislature's passage of [Senate Bill 1303](#) greatly improved the notification process to mitigate this problem; however, lawmakers must now go further and get at the root of the problem.

In light of the elimination of forced annexation, the ETJ concept as a whole needs to be re-evaluated. Right now, Texans have no ability to remove themselves from an ETJ, meaning that one could be forced to reside there in perpetuity. This means a person could be forever subjected to rules and governors that they have no ability to influence. That is a threat to private property rights and inconsistent with the idea that government is derived from the consent of the governed.

Depriving a person of their ability to participate in the democratic process on the basis of an artificial boundary is at odds with the spirit of the U.S. and Texas constitutions. Let's remember that [Article IV, Section 4 of the U.S. Constitution](#) guarantees "a Republican Form of Government," and that [Article I, Section 2 of the Texas Constitution](#) says: "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." State lawmakers would do well to bring the ETJ concept in closer alignment with these constitutional pledges.

Given this, the next Texas Legislature should focus on eliminating municipal regulatory authority in the ETJ to the greatest extent possible.

### The Facts

- In an ETJ, cities commonly impose certain regulations, like signage and fireworks restrictions, and derive revenue, as with impact fees.
- In 2017, the Texas Legislature partially eliminated forced annexation. In 2019, state lawmakers jettisoned the concept entirely. Given the newly reconfigured system, it is time to re-evaluate the purpose of ETJs altogether.
- Article IV, Section 4 of the U.S. Constitution guarantees "a Republican Form of Government."
- Article I, Section 2 of the Texas Constitution states: "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."

### Recommendation

Abolish municipal regulatory authority in the ETJ to the greatest extent possible.

### Resources

[Arch Resorts, LLC v. City of McKinney Amicus Brief](#), Texas Public Policy Foundation (May 11, 2016).

["City Limits: What is an ETJ Good For?"](#) [Video], Texas Public Policy Foundation (Jan. 10, 2019).

[Senate Bill 1303: Testimony Before the Texas Senate Committee on Intergovernmental Relations](#) by Shelby Sterling, Texas Public Policy Foundation (March 25, 2019).