

MEMO

DATE: June 25, 2019

TO: The Woodlands Township Board of Directors

FROM: Amy M. Lecocq

RE: Texas Annexation law and contracts' impact on options for the governance of The Woodlands

Until Texas annexation law changed in 2017, Texas was one of the few states that permitted forcible annexations by all municipalities of unincorporated county property.

The threat of forced annexation has been intertwined with discussions of The Woodlands governance options for years. Even before The Woodlands became a Township, residents expressed concerns that Houston and/or Conroe would annex them. A similar unincorporated northern suburb of Houston, Kingwood, was forcibly annexed by Houston on December 1, 1996 and the Kingwood residents were emotional and vocal in their displeasure. In response, a moratorium agreement with Houston was developed which prohibited annexation of The Woodlands area from 1999-2011 and later Regional Participation Agreements were entered into with Houston and Conroe to prohibit annexation from 2007-2057.

I. Regional Participation Agreements with Houston and Conroe prohibited forcible annexation of The Woodlands until after November 2057.

In order to address this perceived threat, the predecessor to The Woodlands Township, the Town Center Improvement District (TCID) entered into two similar Regional Participation Agreements (RPAs)— one with the City of Houston and the other with the City of Conroe in the summer of 2007.

The RPAs each established a Regional Participation Fund as a mechanism to fund Regional Participation Projects managed by each city. TCID agreed to provide an initial deposit (\$16M to Houston and \$320,000 to Conroe) and to thereafter deposit 1/16th of 1% of sales tax revenue into the Funds for at least 99 years. See Sections 2 - 4 of each RPA. In exchange, TCID received protection from annexation for a period of 50 years by the inclusion of several provisions in the RPA, that are authorized by Texas Local Govt. Code, Section 43.0754, Regional Participation Agreements.

Principally, in each City's RPA at Section 5.1: "Annexation Deferral" the City agrees that it will not take any action or proceedings to annex the District or The Territory (The Woodlands), in whole or in part, for full, limited or other purposes for 50 years from the effective date of the RPA. The authority for parties to enter an RPA to defer annexation is provided by Texas Local Govt. Code, Section 43.0754(c)(6). Neither the RPA nor the Texas Code provide any express

guidance on annexation upon expiration of the 50 years of relief from annexation, so the presumption is that the parties would follow the annexation law then in effect.

Also, each City's RPA at Section 5.4: "Release from ETJ" releases the District from each City's ETJ upon the earlier of either the incorporation of all or any portion of the District as a municipality or the adoption by all or any portion of the District of an alternative form of local government under Texas law.

...the City agrees to and does hereby release from the ETJ of the City the portion of the Expanded District (The Woodlands) to be incorporated as a municipality, or over which an alternate form of local government under Texas law is to be adopted, but effective only on or after May 29, 2014, and simultaneously upon and at the time of: (a) the earlier of either (1) the incorporation of all or any portion of the Expanded District as a municipality, or (2) the adoption by all or any portion of the Expanded District of an alternate form of local government under Texas law; ... Houston RPA

Significant areas of The Woodlands lie in the Extraterritorial jurisdictions (ETJs) of Houston and of Conroe. As a general rule, absent RPAs or Texas State Law to the contrary, those areas are eligible for annexation by the city maintaining the ETJ. Thus, both cities released TCID from the ETJ of their respective city upon incorporation or adoption of an alternative form of local government, at any time after May 29, 2014 as authorized by Texas Local Govt. Code, Section 43.0754(c)(7). The Release from ETJ under both RPAs is effective as long as TCID meets its obligations under the agreement (i.e. pays its deposits).

During the summer of 2007 the area occupied by present-day The Woodlands Township was governed by two Home Owners Associations, a Commercial Association and TCID. In a November 6, 2007 election the residents passed three TCID Propositions: 1) to fold the three associations into the Town Center Improvement District (renamed The Woodlands Township) , 2) to establish an elected Board of 7 Directors, and 3) to levy a property tax in lieu of the community assessments, which were not deductible on federal income taxes. This vote allowed the creation of The Woodlands Township as a Special Purpose District (SPD) and also became the effective date for the bulk of the RPA provisions. RPAs at Section 7.1 Effective Dates.

II. **Annexation of The Woodlands after expiration of the RPA's annexation provisions (November 2057) cannot occur without consent of the resident voters and possibly landowners as required by S.B. 6.**

On August 15, 2017, Texas Governor Abbott signed Texas Senate Bill 6 (*Tex. S.B. 6, 85th Leg., 1st C.S. (2017)*) which limited municipal annexation authority. Senator Brandon Creighton co-authored the bill and Representative Mark Keough co-sponsored the bill. Both legislators represented The Woodlands in 2017. On August 18, 2017, The Texas Municipal League Legislative Update, Number 32 at page 5 reported on "S.B. 6 (Cambell/Huberty) – Annexation:

completely rewrites the Municipal Annexation Act to severely curtail the ability of cities to annex property.”

S. B. 6 became effective on December 1, 2017 and has been incorporated as amendments within Chapter 43 of the Local Government Code. Near the effective date, Scott Houston, TML Deputy Executive Director and General Counsel stated the following in response to the question “How did legislation passed in 2017 affect municipal annexation?”

On December 1, 2017, municipal annexation as it existed for over a century in populous counties changed dramatically. On that date, Senate Bill 6 became effective. Tex. S.B. 6, 85th Leg., 1st C.S. (2017). The bill requires landowner and voter approval of annexations in the state’s largest counties (those with 500,000 population or more) and in counties that opt-in to the bill through a petition and election process.

S.B. 6 required landowner or voter approval of annexations in the state’s largest counties (those with a population of 500,000 or more) and in counties that opt-in to the bill’s provisions through a petition and election process. Annexations which involved counties with populations of 500,000 or more were considered Tier 2 municipal annexations. Harris County and Montgomery County each exceed 500,000 in population today and would surely exceed 500,000 in November 2057 when the RPAs’ deferral of annexation expires.

Texas Local Govt. Code, Section 43.0691 applies only to Tier 2 counties in S.B. 6 and reads as follows:

Sec. 43.0691. AUTHORITY TO ANNEX. Authorizes a municipality to annex an area with a population of 200 or more only if the following conditions are met, as applicable:

- (1) the municipality holds an election in the area proposed to be annexed at which the qualified voters of the area may vote on the question of the annexation and a majority of the votes received at the election approve the annexation; and (emphasis added)*
- (2) if the registered voters of the area do not own more than 50 percent of the land in the area, the municipality obtains consent to annex the area through a petition signed by more than 50 percent of the owners of land in the area.*

So, after the deferral of annexation under the RPAs in November 2057, any annexation of The Woodlands would require Houston or Conroe to jump two new hurdles based on the passage of S.B. 6. In order to annex The Woodlands, Houston or Conroe would be required: 1) to obtain a majority of votes in favor of the annexation; and 2) to determine whether the registered voters own more than 50% of the land to be annexed and if they do not, obtain a petition signed by more than 50% of the owners of land to be annexed. There are other procedural requirements which serve as a disincentive to municipalities interested in annexing. These hurdles include: Adopting a Resolution as set forth at Texas Local Govt. Code, Section 43.0692; Providing Notice as set forth at Texas Local Govt. Code, Section 43.0693; and Holding public hearings as set forth at Texas Local Govt. Code, Section 43.0691.

These stringent requirements for annexation authority contained within Senate Bill 6 act as powerful weapons for the residents of an area to fight against possible annexation while, at the same time, being both cumbersome and difficult to achieve, present a punishing, if not fatal, blow to Tier 2 municipal annexation without consent.

Although S.B. 6 set forth two tiers of counties, only Tier 2 is relevant to The Woodlands. For sake of comparison, Tier 1 municipal annexations involved those counties which have a population of less than 500,000. Thus, as of August 15, 2017 The Woodlands, Houston and Conroe were on constructive notice that The Woodlands could not ever be forcibly annexed.

III. H.B. 347 (2019) did not affect the stringent hurdles to annex The Woodlands voters established by S.B. 6 (2017). However, it did solidify the legislative intent against forcible annexations by extending the same protections to annexations in smaller counties that S.B. 6 afforded larger counties.

Recently, on May 24, 2019, Texas House Bill 347 (*Tex H.B. 347, 86th Leg., R.S. (2019)*) became effective and its elements incorporated as amendments within Chapter 43 of the Local Government Code. H.B. 347 wholly repeals and eliminates the Tier 1 and Tier 2 municipal annexation labels and distinctions contained within S.B. 6. The heightened Tier 2 requirements of S.B. 6 are now adopted across the board and are now applicable to any municipal annexation efforts regardless of county and area populations. H.B. 347 continues the stringent requirements placed on any attempt by Houston or Conroe to annex The Woodlands by S.B. 6.

Following the expiration of the RPA in 2057 (38 years from the date of this letter), S.B. 6, and H.B. 347, will provide security and act as powerful tools for residents to combat any threat of forcible annexation of The Woodlands Township by any surrounding municipality at any time.

Nothing in the RPA would force annexation of The Woodlands Township without its consent or otherwise serve to thwart the stringent requirements contained within the Texas Local Government Code.