CITY OF McKINNEY, TEXAS

Agenda

Joint Meeting

Monday, November 16, 2015	**5:45 PM**	**Council Chambers** **222 N. Tennessee Street** **McKinney, Texas 75069**

McKINNEY CITY COUNCIL
AND
PLANNING AND ZONING COMMISSION

CALL TO ORDER

15-1121 Discuss the City Council's Expectations of the Planning and Zoning Commission

15-1122 Discuss Planning and Zoning Commission's Expectations of Staff in Reports and Information Sharing Originating from City Council Meetings

15-1123 Update on the ONE McKinney 2040 Comprehensive Plan Initiative, Specifically as it Relates to Land Use, Growth and Development Decisions in McKinney

Attachments: Existing Future Land Use Plan (2004)
Existing MTP (2004)
ONE McKinney 2040 Process
Public Outreach Progress
Presentation

15-1124 Update on Phase II of the Northwest Sector Study, Specifically to Discuss the Proposed Northwest Sector Streets Policy

Attachments: Draft NWS Streets Policy
Northwest Sector Study Timeline
Presentation

ADJOURN PLANNING AND ZONING COMMISSION MEETING

CITY COUNCIL WORK SESSION

DISCUSS REGULAR MEETING AGENDA ITEMS

WORK SESSION ITEMS

15-1069 Presentation by Texoma Area Paratransit System (TAPS) Regarding City of McKinney Transit Operations

Attachments: TAPS Proposed Routes

15-1148 Discuss and Provide Direction to Staff Regarding Proposed Revisions to the Floodplain Amendment Process

Attachments: Draft Ordinance

15-1125 Discuss Virginia Parkway Lanes 5 & 6 from US 75 to Ridge Road

Attachments: 2014-11-03 Staff Report
Presentation

15-1126 Present/Discuss Housing and Community Development Policies, Programs and Goals for FY16

Attachments: CDBG Subrecipient Manual
Conflict of Interest Policy
Affordable Housing Policies and Procedures Draft
Housing Program Projects as of June 2015
Presentation

15-1127 Consider/Discuss Potential Approach for Orderly Growth and Annexation Planning

Attachments: Municipal Annexation in Texas
City of McKinney and ETJ (2015)
1999 McKinney Annexation Plan
Presentation

COUNCIL LIAISON UPDATES

EXECUTIVE SESSION

In Accordance with the Texas Government Code:

A. Section 551.071 (2). Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed) and legal consultation on the following item(s), if any:
- TAPS Agreement
- Annexation Process

B. Section 551.074 Discuss Personnel Matters
- City Manager Transition

C. Section 551.087 – Discuss Economic Development Matters
- Project A71 - Gateway
- Project A90 - Nonagon
- Project A132 - Expense

ACTION ON EXECUTIVE SESSION ITEMS

ADJOURN CITY COUNCIL MEETING

Posted in accordance with the Texas Government Code, Chapter 551, on the 13th day of November, 2015 at or before 5:00 p.m.

_____
Sandy Hart, TRMC, MMC
City Secretary

Accommodations and modifications for people with disabilities are available upon request. Requests should be made as far in advance as possible, but no less than 48 hours prior to the meeting. Call 972-547-2694 or email contact-adacompliance@mckinneytexas.org with questions or for accommodations.

15-1121

TITLE: Discuss the City Council's Expectations of the Planning and Zoning Commission

SUPPORTING MATERIALS:

15-1122

TITLE: Discuss Planning and Zoning Commission's Expectations of Staff in Reports and Information Sharing Originating from City Council Meetings

SUPPORTING MATERIALS:

15-1123

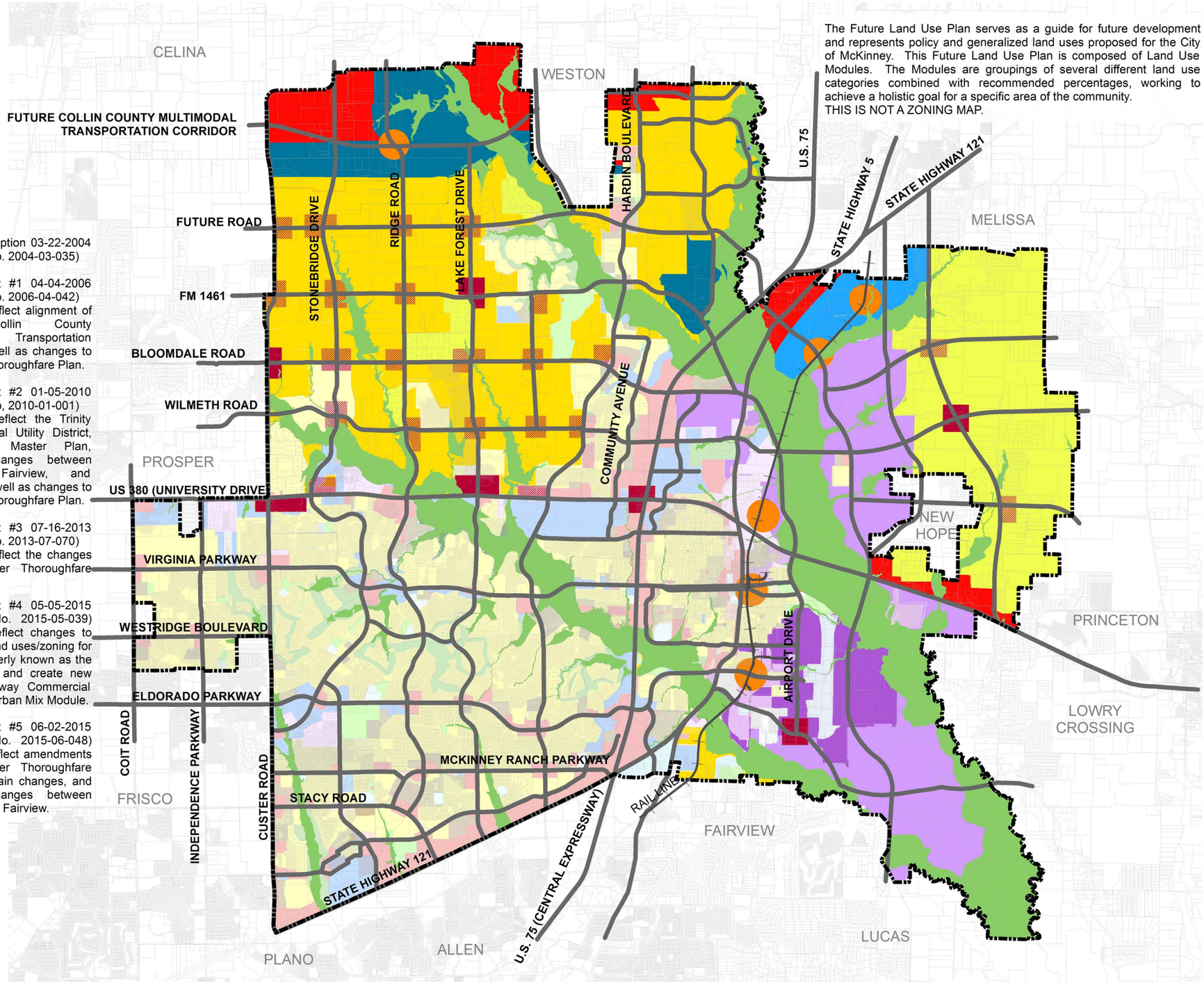
TITLE: Update on the ONE McKinney 2040 Comprehensive Plan Initiative, Specifically as it Relates to Land Use, Growth and Development Decisions in McKinney

SUPPORTING MATERIALS:

Existing Future Land Use Plan (2004)
Existing MTP (2004)
ONE McKinney 2040 Process
Public Outreach Progress
Presentation

CITY OF MCKINNEY
COMPREHENSIVE PLAN
FUTURE LAND USE PLAN

The Future Land Use Plan serves as a guide for future development and represents policy and generalized land uses proposed for the City of McKinney. This Future Land Use Plan is composed of Land Use Modules. The Modules are groupings of several different land use categories combined with recommended percentages, working to achieve a holistic goal for a specific area of the community.
THIS IS NOT A ZONING MAP.



Legend

- Existing and Future Thoroughfares
- Extraterritorial Jurisdiction (ETJ)
- Rail Line
- Floodplain

FUTURE LAND USE MODULES

- Estate Mix
- Suburban Mix
- Urban Mix
- Town Center
- Transit Village (1/4 mile radius)
- Community Village
- Regional Commercial
- Tollway Commercial
- Regional Employment
- Office Park
- Industrial
- Airport Industrial
- Potential Commercial within the Residential Module (Based on Locational Criteria)

ANTICIPATED LAND USES / ZONING

- Floodplain
- Golf Course
- Parks/Open Space
- Government/Schools
- Airport
- Heavy Manufacturing
- Light Manufacturing
- Commercial Historic
- Commercial
- Neighborhood Business
- Mixed Use
- Office
- Residential/Low Density
- Residential/Medium Density
- Residential/High Density
- Residential/Urban High Density

Source: City of McKinney Planning Department Data

02 June 2015
FIGURE 7.4

0 1 2 Miles

100 Acres

1 Square Mile

* Original Adoption 03-22-2004 (Ordinance No. 2004-03-035)

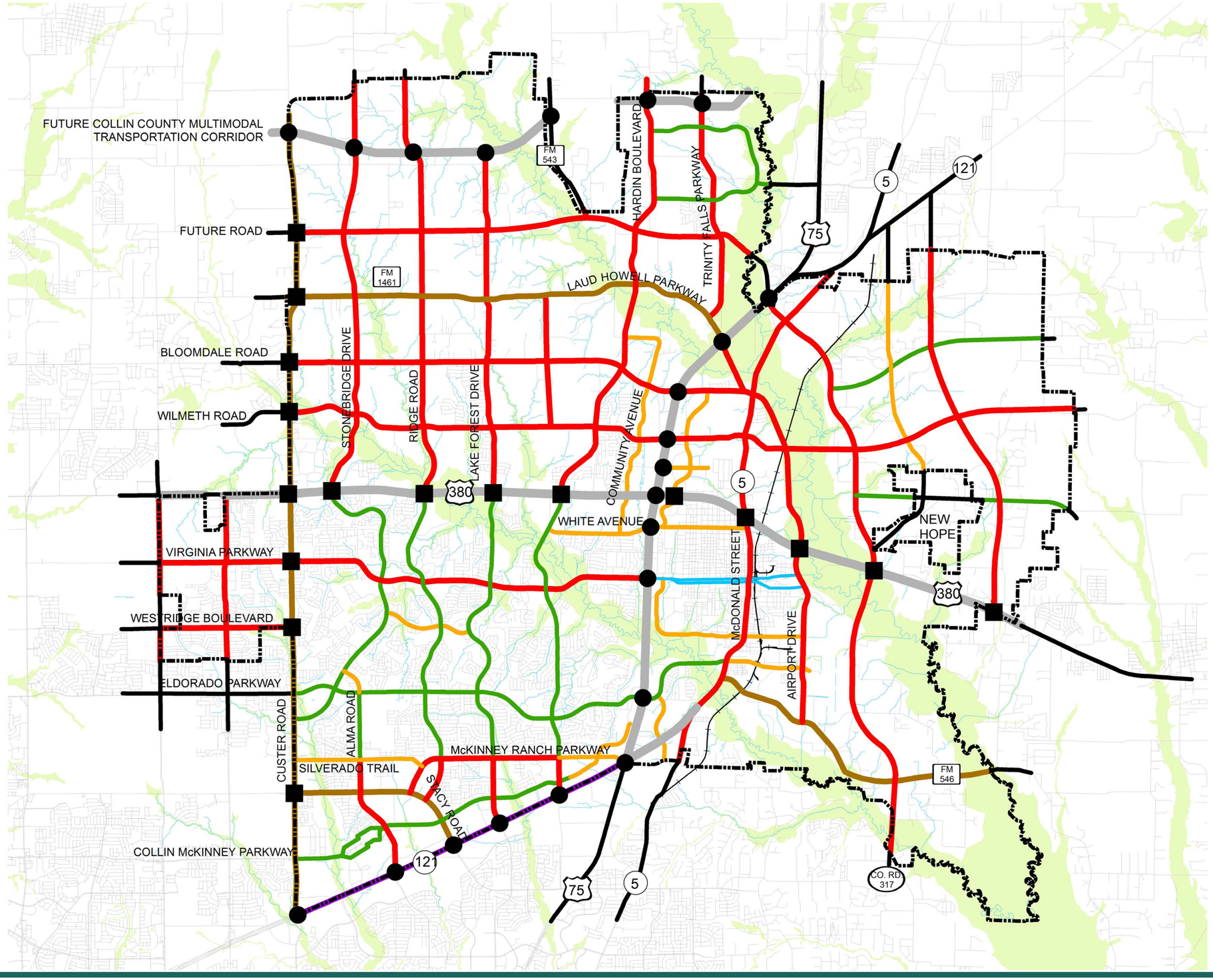
* Amendment #1 04-04-2006 (Ordinance No. 2006-04-042) Revised to reflect alignment of Future Collin County Multimodal Transportation Corridor as well as changes to the Master Thoroughfare Plan.

* Amendment #2 01-05-2010 (Ordinance No, 2010-01-001) Revised to reflect the Trinity Falls Municipal Utility District, the Airport Master Plan, boundary changes between McKinney, Fairview, and Princeton as well as changes to the Master Thoroughfare Plan.

* Amendment #3 07-16-2013 (Ordinance No. 2013-07-070) Revised to reflect the changes to the Master Thoroughfare Plan.

* Amendment #4 05-05-2015 (Ordinance No. 2015-05-039) Revised to reflect changes to anticipated land uses/zoning for the area formerly known as the REC Module and create new modules: Tollway Commercial Module and Urban Mix Module.

* Amendment #5 06-02-2015 (Ordinance No. 2015-06-048) Revised to reflect amendments to the Master Thoroughfare Plan , floodplain changes, and boundary changes between McKinney and Fairview.



CITY OF MCKINNEY

COMPREHENSIVE PLAN

MASTER THOROUGHFARE PLAN

- High Capacity at Grade Intersections
- Grade Separated Intersections
- Extraterritorial Jurisdiction (ETJ)
- Rail Line
- Floodplain

Roadway Classifications

- Major Regional Highway / Multi-Modal
- Tollway
- Principal Arterial: (P6D - 130'-150' ROW, 6 lanes)
- Major Arterial: (M6D - 120' ROW, 6 lanes)
- Minor Arterial: (M4D,M5U,M4U,M3U)
- Greenway Arterial: (G4D - 120' ROW, 4 lanes)
- Town Thoroughfare
- Road By Others

* Original Adoption (Ordinance No. 2004-03-035)
* Amendment #1 (Ordinance No. 2005-10-133) Revised to reflect changes to Ridge Road and Stonebridge Drive north of Bloomdale Road.
* Amendment #2 (Ordinance No. 2010-01-001) Revised to reflect actual alignments of recently built roads, the Future Collin County Multimodal Transportation Corridor alignment, the Trinity Falls Municipal Utility District, assorted roadway classification changes, and boundary changes between McKinney, Fairview and Princeton.
* Amendment #3 (Ordinance No. 2012-11-160) Revised to reflect new Custer Rd. /Wilmeth Rd. Alignment.
* Amendment #4 (Ordinance No. 2013-07-070) Revised to reflect actual alignments of recently built roads, the Future Collin County Multimodal Transportation Corridor alignment, the Trinity Falls Municipal Utility District, Custer Rd. north of U.S. 380, Stonebridge Dr. north of U.S. 380, Hardin Blvd. north of U.S. 380, FM 546, and assorted roadway classification changes.
* Amendment #5 (Ordinance No. 2015-06-048) Revised to reflect actual alignment of recently built roads, changes to the Ridge Rd., Lake Forest Dr. and Laud Howell Pkwy. alignments, assorted roadway classification changes, boundary changes between McKinney and Fairview, and floodplain changes.

Source: City of McKinney GIS Department Data

2 June 2015

FIGURE 8.3

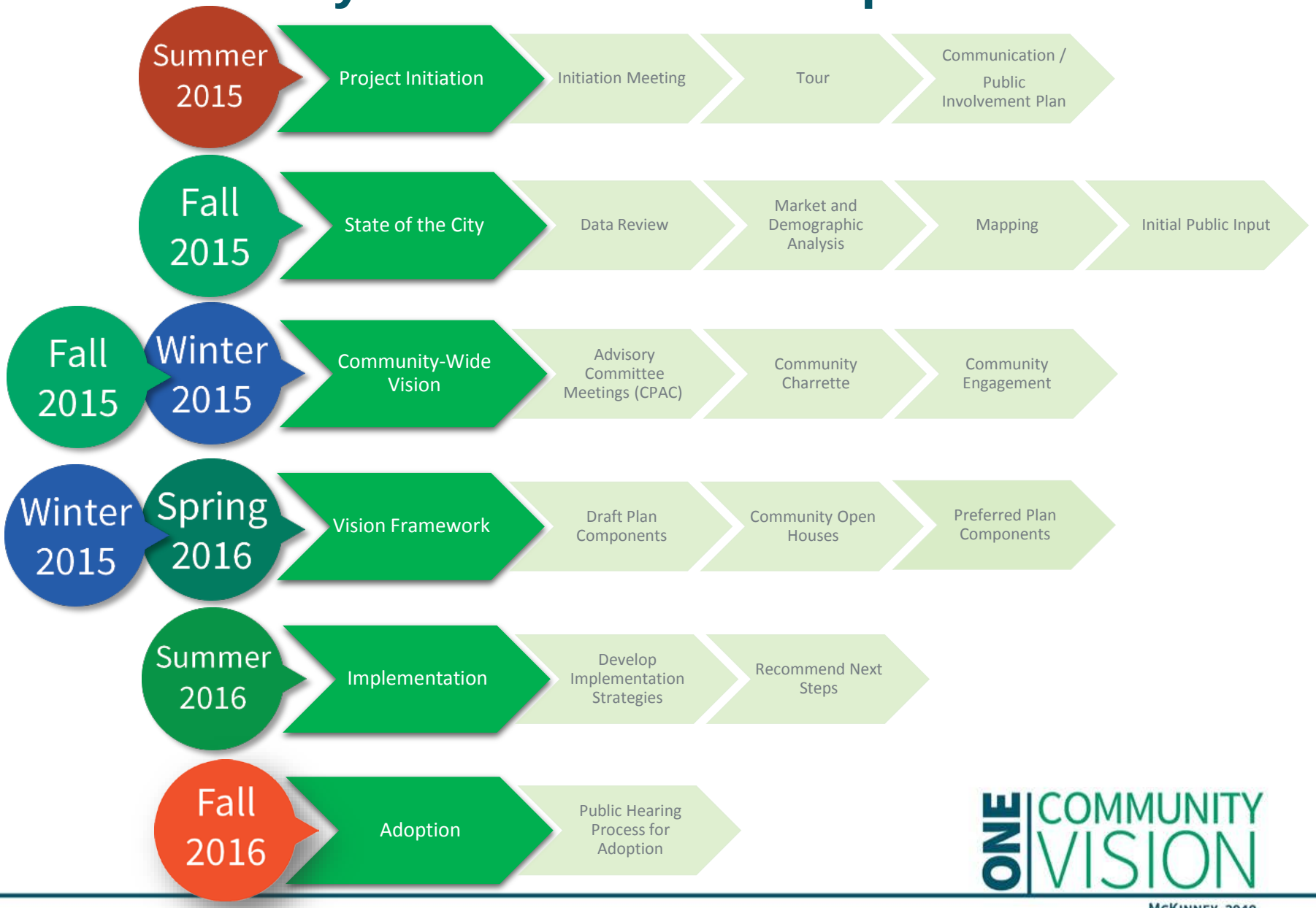
0 1 2 Miles

100 Acres

1 Square Mile

Disclaimer: The Master Thoroughfare Plan provides generalized locations for future thoroughfares. Alignments may shift as roads are engineered and designed to accomodate floodplain areas and to meet sound engineering and urban planning principles. The roadway lines shown on the plan are not precise (site specific) locations of future thoroughfares.

ONE McKinney 2040 Process: Scope & Timeline



ONE COMMUNITY VISION

McKinney 2040

ONE McKINNEY 2040

Public Meeting Timeline

June 16
City Council Meeting
Budget and Scope Approval

August 18
City Council Meeting
Advisory Committee Appointed

Project Initiation

Summer 2015

Fall 2015

State of the City | Community Wide Vision

October 24
Community Charrette

October 14
Advisory Committee Meeting

October 5
City Council Meeting
Project Update

September 25 - 27
Oktoberfest Booth

September 16 - 17
Community Summits

September 3
Stakeholder Interviews

September 2
Stakeholder Interviews
Advisory Committee Meeting

September 1
Staff Working Session

August 31
Stakeholder Interviews

Community Wide Vision

Winter 2015

Winter 2016

Vision Framework

Vision Framework | Implementation

Spring 2016

Summer 2016

Implementation | Adoption

Adoption

Fall 2016

ONE COMMUNITY VISION
McKINNEY 2040

Joint City Council / Advisory Committee Meeting

Advisory Committee Meeting

Public Input

City Council Meeting

ONE MCKINNEY 2040
Comprehensive Plan Update

- MONEY MAGAZINE 2014 -

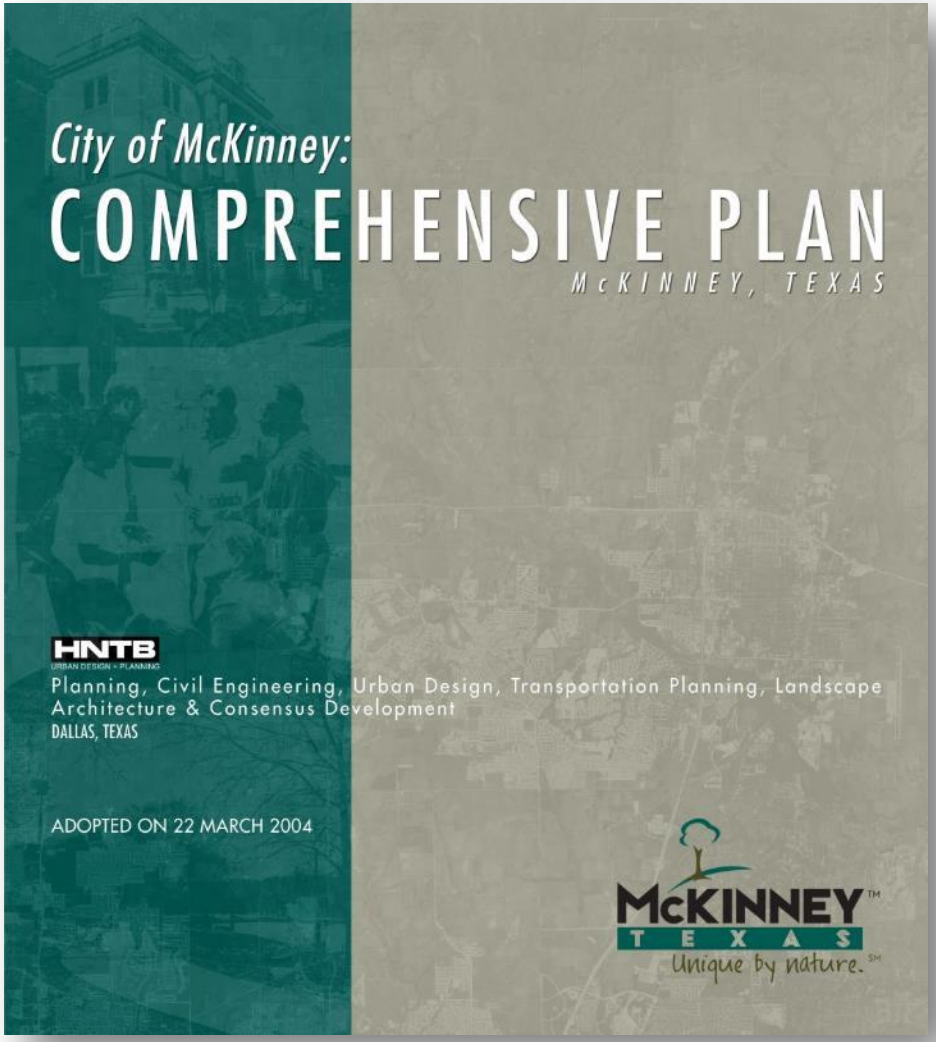
What is a Comprehensive Plan

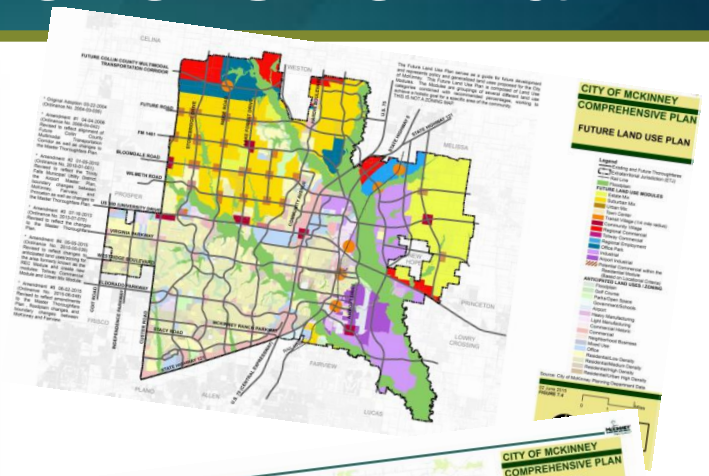
A Comprehensive Plan is a Statement of the Community's Vision Now and for the Future

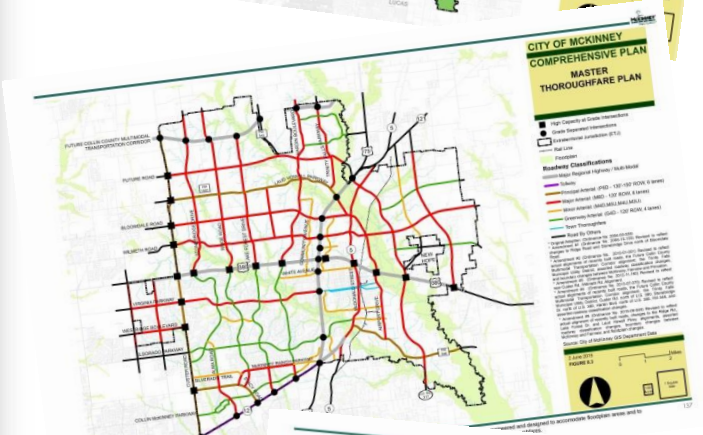
- Typically comprised of a number of interrelated elements such as land use, transportation, utilities, public services, socio-economic, preservation, and open space elements.
- Provides direction for the City's future growth and development
- Sets goals for many aspects of civic operations
- Required by State Law (Texas Local Government Code)

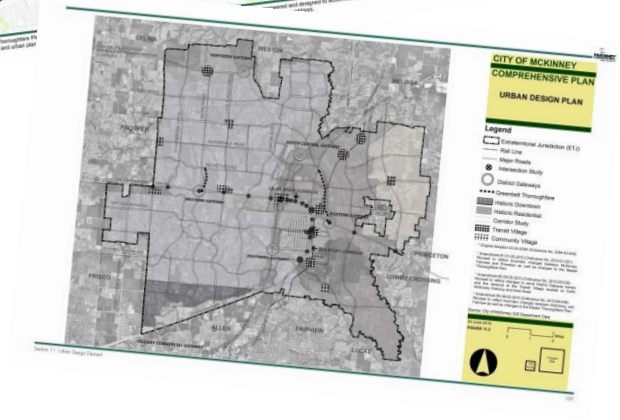
*While a Comprehensive Plan states the community's vision for the future, it does **not** constitute zoning regulations or establish zoning district boundaries.*

2004 McKinney Comprehensive Plan









How is a Comprehensive Plan Used?

- Used to coordinate and guide the establishment of development regulations.
- Used to provide a basis for future zoning decisions.
- Helps to guide public investments in transportation and other infrastructure improvements.

ONE McKINNEY 2040

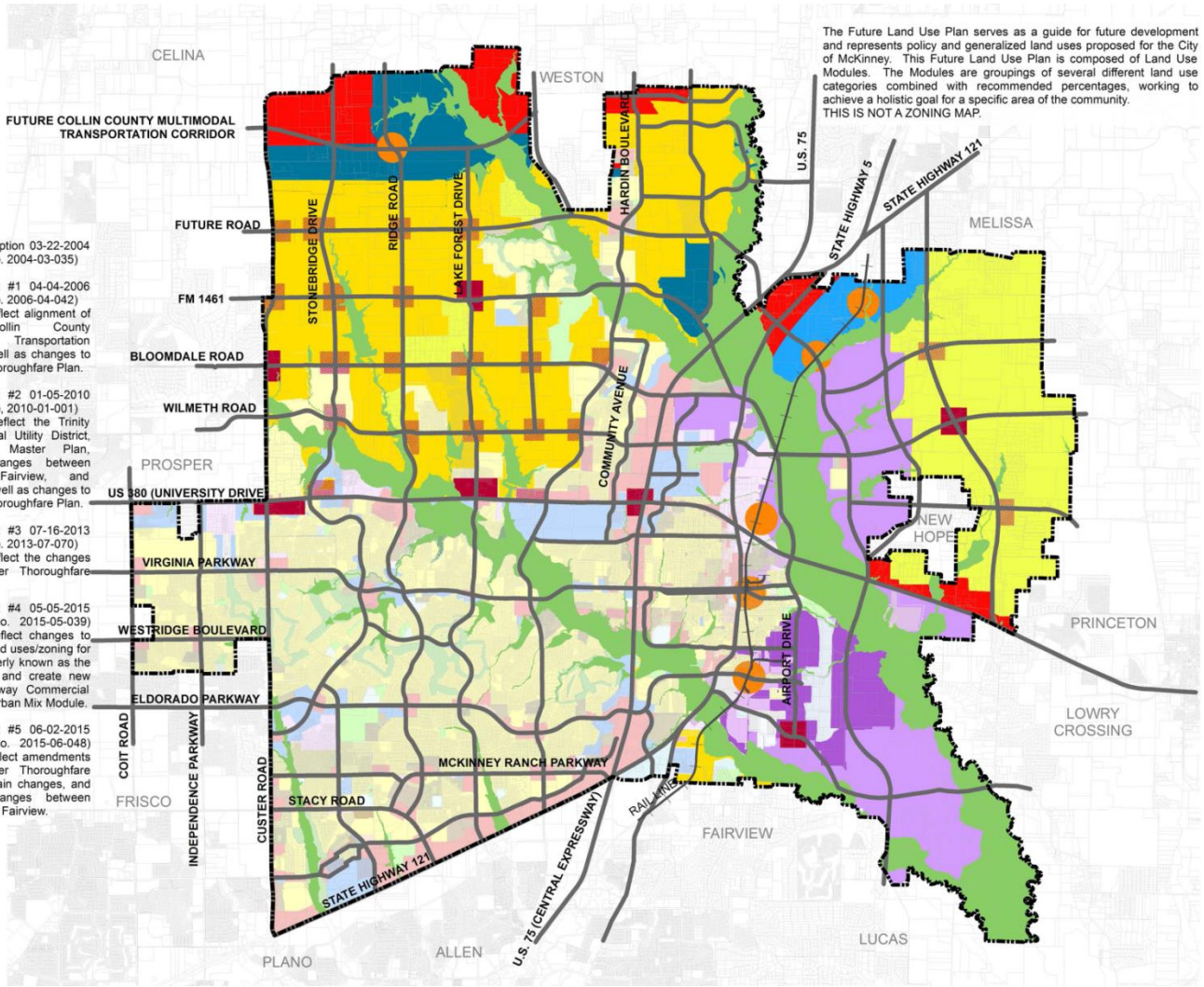
Why are we updating the Comprehensive Plan?

- McKinney's City Charter requires a Comprehensive Plan
- Current Comprehensive Plan was adopted in 2004, much has changed in the past 11 years
- Population growth to over 155,000 residents
- High level of development has taken place
- Texas Local Government Code requires zoning regulations to be adopted in accordance with a comprehensive plan.

Potential Elements of the 2040 Plan

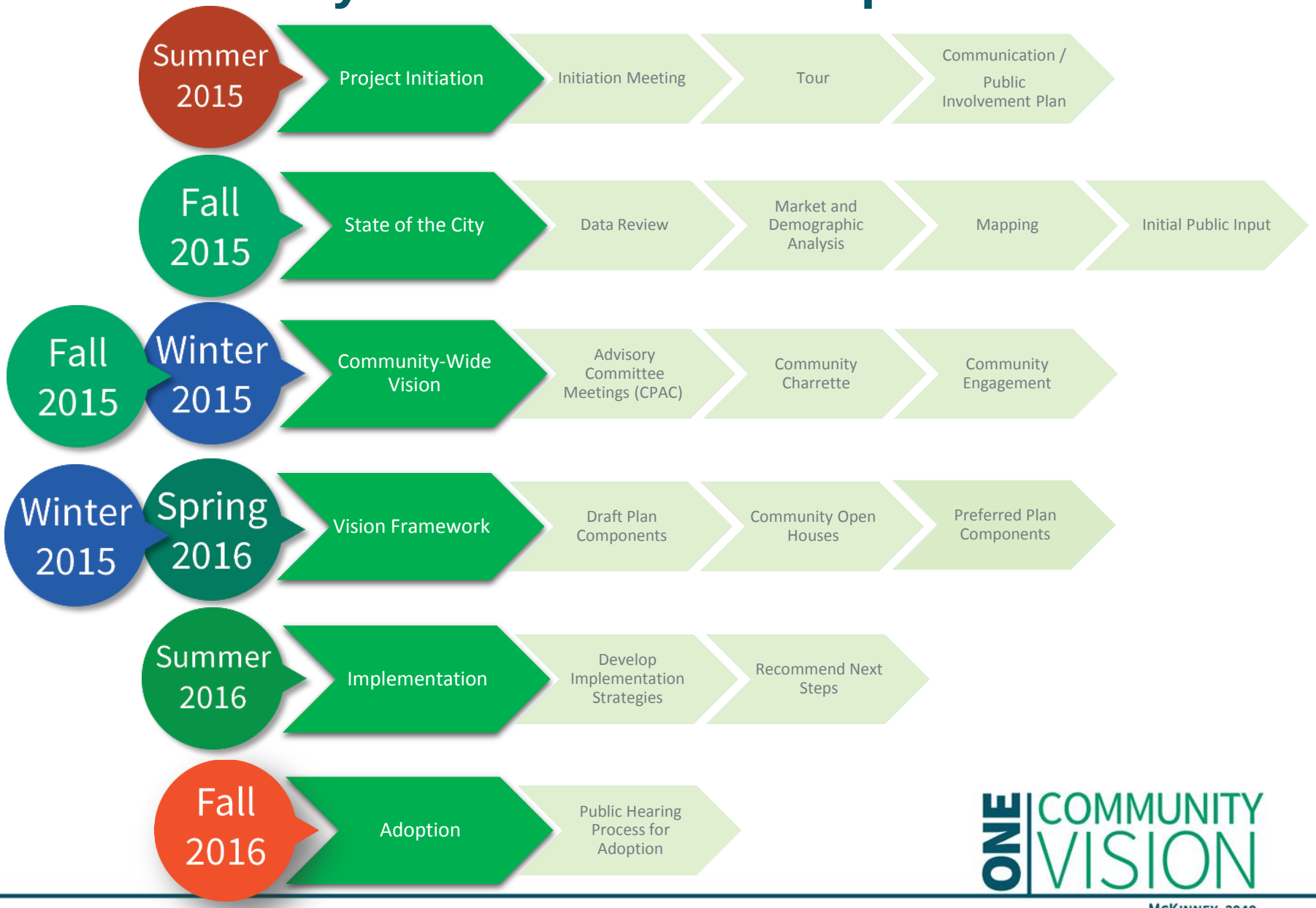
- Land Use Strategy
- Development Strategy
- Economic / Fiscal Strategy
- Aviation Strategy
- Town Center Element / Historic Preservation
- Infrastructure / Public Services Strategy
- Mobility Strategy
- Park Master Plan (Coordination)
- Public Health and Safety Strategy
- Education Strategy

2004 McKinney Comprehensive Plan



ONE McKinney 2040 Process

ONE McKinney 2040 Process: Scope & Timeline

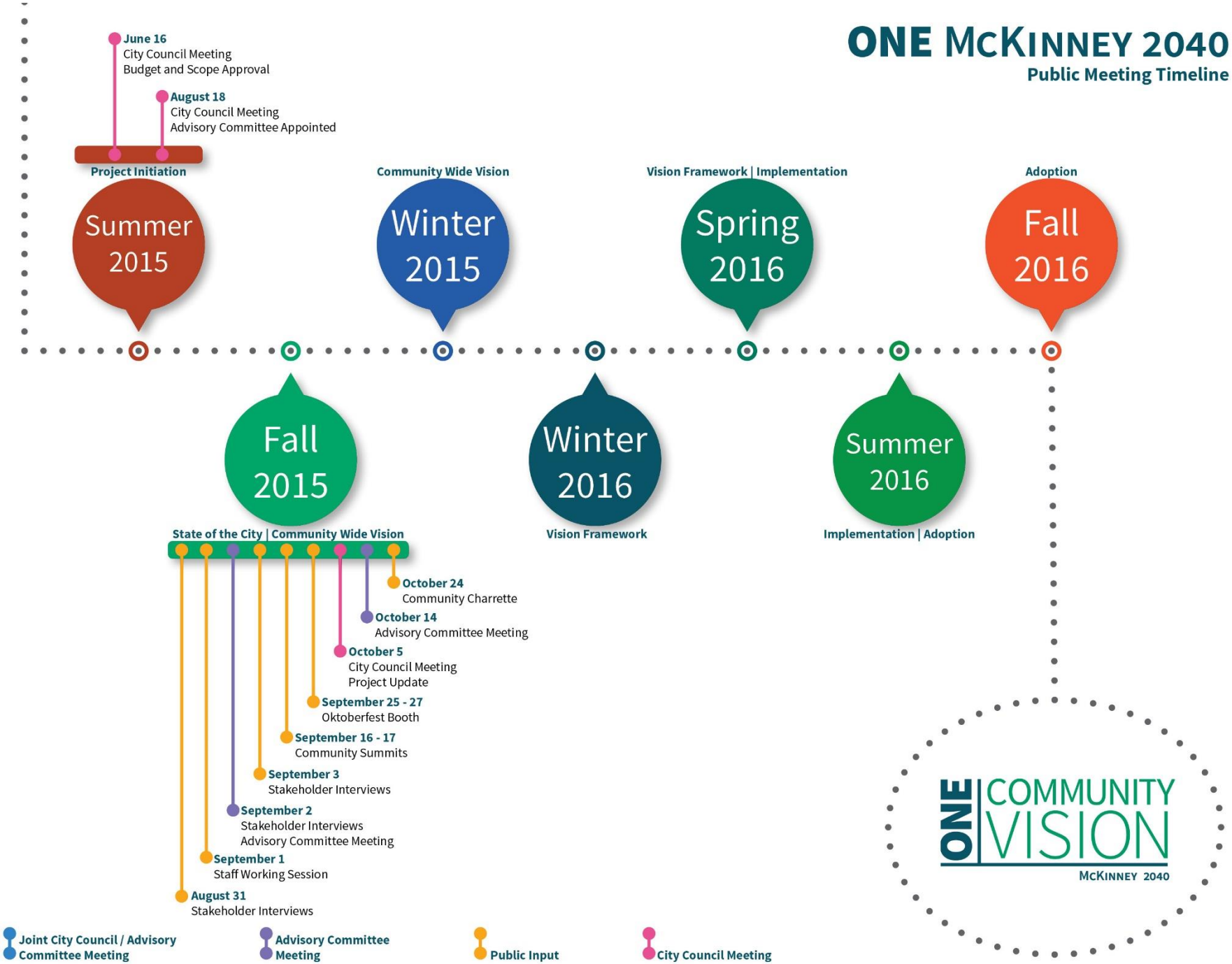


ONE COMMUNITY VISION

McKinney 2040

ONE McKINNEY 2040

Public Meeting Timeline



Comprehensive Plan and Its Influence on Day-to-Day Decisions

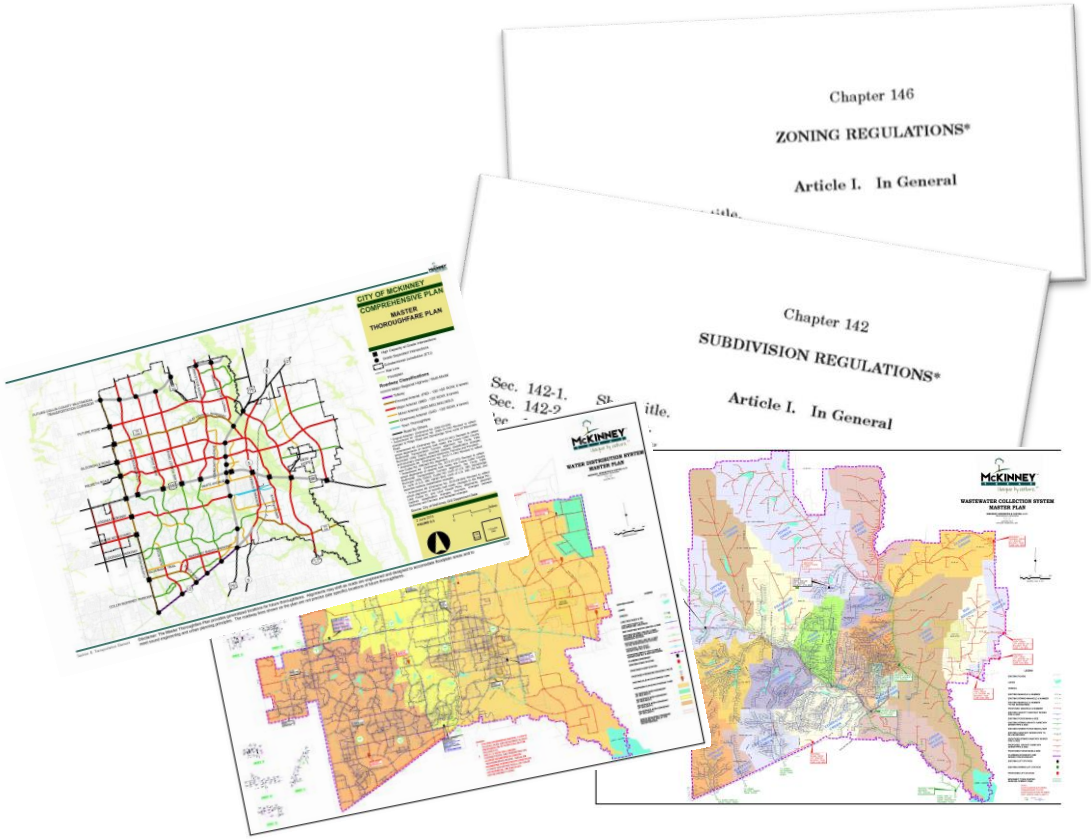
Vision & Policy Document
(roadmap for a preferred future)

ONE McKinney 2040
Comprehensive Plan

ONE COMMUNITY VISION
McKINNEY 2040

ONE COMMUNITY. ONE VISION. ONE McKINNEY 2040

Regulatory & Fiscal Tools for Implementation
(vehicles for reaching the vision)



Next Steps

Winter 2015

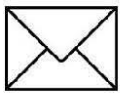
December 9: Joint Workshop of City Council & Comprehensive Plan Advisory Committee (CPAC)

January: Alternative Futures Public Workshop

Stay in the Know


www.onemckinney2040.com


972.547.7400


ATTN: Planning Department
221 N. Tennessee Street
McKinney, TX 75069


info@onemckinney2040.com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linkedin.com/company/one-mckinney-2040

15-1124

TITLE: Update on Phase II of the Northwest Sector Study, Specifically to Discuss the Proposed Northwest Sector Streets Policy

COUNCIL GOAL: Direction for Strategic Growth

MEETING DATE: November 16, 2015

DEPARTMENT: Development Services - Planning Department

CONTACT: Brian Lockley, AICP, CPM, Director of Planning
Jennifer Arnold, Planning Manager
Steven Doss, Planner I

RECOMMENDED CITY COUNCIL ACTION:

- Discuss and provide feedback on the proposed Northwest Sector Streets Policy.

ITEM SUMMARY:

- Phase II of the Northwest Sector Study Initiative is focused on identifying the best approach for implementing the vision for quality that was described in the Northwest Sector Phase I Report.

- To that end, Staff has been working with Gateway Planning Group to develop and analyze the implementation strategies that were described in the Phase I Report and more fully defined in the approved Phase II Scope of Work. This includes:
  - A Retail Market Analysis;
  - A Local Streets Policy;
  - Developing an Approach for Orderly Growth and Development;
  - Regulatory Review and Recommendations; and
  - Developing an Infrastructure Financing Policy.

- Staff is presenting tonight, an update on the “Local Streets Policy” task.

- Earlier this year, Staff presented to the Council a broad framework for a potential Northwest Sector Streets Policy for discussion. Following the City Council

discussion, Staff also presented the policy framework to the Development Advocacy Group of the McKinney Economic Development Corporation (MEDC). Feedback received from the Council as well as the Development Advocacy Group was generally supportive.

- Since that time, Staff has been working with the consultant team as well as internal staff from the Engineering Department and Fire Marshal's Office to develop the proposed Northwest Sector Streets Policy.

PROPOSED NORTHWEST SECTOR STREETS POLICY

- The main purpose of the Northwest Sector Streets Policy is to better define and relate the primary function of collector and residential streets (collectively known as local streets) in different environments.

- The foundation of the proposed policy is rooted in the understanding that local streets (collectors and residential streets) should be differentiated by their purpose as a *link* street or a *place-focused* street. This distinction will guide the creation of a more nuanced set of street sections that offer more flexibility based on the context as a matter of right as opposed to exception.

- The intended outcome of this more nuanced approach would be neighborhoods and destinations that retain higher levels of quality over time due to their thoughtful application of streets and design, rather than a one-size-fits-all approach.

- The proposed Northwest Sector Streets Policy outlines the following approach:

    1. **Northwest Sector Street Network Criteria:** The proposed policy establishes a clear set of priorities that should guide how collector and residential streets are planned, designed and constructed.

    2. **Street Types:** The proposed policy identifies a new set of local street types and states that standard cross sections should be established to allow necessary flexibility in their design so that they can achieve the goals of the street network criteria and be tailored to specific land uses and development patterns.

    3. **Fundamental Connectivity Framework:** The proposed policy states that the function of streets (as link-focused or place-focused) and their relationship to each other within a neighborhood and to other areas should be fundamentally described for proposed development projects.

- If adopted, the proposed Northwest Sector Streets Policy, including design guidelines, should be used to directly inform changes to the Street Design

Manual and other relevant regulations and ordinances.

BACKGROUND INFORMATION:

- Officially kicked off in Fall 2013, Phase I of the Northwest Sector Study Initiative included an analysis of existing conditions; a series of public outreach events and the creation of priorities and principles for future growth and development (these priorities and principles collectively serve as the Vision). Phase I also included an analysis of potential infrastructure investments; an evaluation of the potential value of the vision; and recommended actions for implementation.

- The vision for the Northwest Sector is comprised of four major parts: Sectorwide Goals and Objectives, Sectorwide Framework, Sub-Area Priorities, and Place Type Planning Principles. These collective parts establish a vision for the Northwest Sector that reinforces the goals and objectives of the community and clearly defines the quality of place desired by its residents.

- In early 2015, the Northwest Sector Study Phase I Report was approved and adopted by reference into the Comprehensive Plan in order to serve as a meaningful policy guide for city officials, staff, property owners, and private developers when considering decisions in the Northwest Sector.

- The purpose of Phase II of the Northwest Sector Study Initiative is to analyze, select, relate and phase the appropriate implementation components (e.g. policies, ordinances, fiscal tools) into a comprehensive action plan that will allow the vision for the Northwest Sector to be achieved and sustained over time.

- As such, earlier this year, Staff and the consultant team began working on several components of Phase II, including

    - a market analysis and creation of locational criteria (complete);
    - the creation of a local street typology strategy/policy (95% complete);
    - an approach for orderly growth and annexation strategies (60% complete);
    - the analysis of and proposed amendments to development regulations in the Northwest Sector (TBD); and
    - the creation of an infrastructure financing policy (TBD).

- More information about the Initiative can be found by visiting www.mckinneytexas.org/nwsector <http://www.mckinneytexas.org/nwsector>.

- Earlier this year, the City also launched the ONE McKinney 2040 Comprehensive Plan Update. As the Comprehensive Plan Update continues to move forward, Staff has remained mindful of the potential alignment of Northwest Sector Phase II tasks with those of the Comprehensive Plan Update (specifically related to the regulatory review and infrastructure financing policy).

- With that in mind, Staff will be coordinating with the consultant teams to discuss remaining tasks, timing and the potential for maximizing the professional services received from each team.

SUPPORTING MATERIALS:

Draft NWS Streets Policy
Northwest Sector Study Timeline
Presentation

Northwest Sector Streets Policy

[draft 11.6.15]

I. Purpose

The Northwest Sector of McKinney offers some of the most beautiful natural features in North Texas, such as rolling hills, creeks and dense groves of trees. These features should be respected, leveraged and integrated into neighborhoods developed in the future. Approved by City Council in February 2015 by Resolution No. 2015-02-022(R), the vision for the Northwest Sector identifies a number of principles and priorities for the area that address how future growth and development should occur over time within the existing natural environment.

Specifically, the Northwest Sector Study Phase I Report outlines three recommendations for improving transportation, access and mobility within the Sector. They state as follows:

1. More refined planning and management of the collector roadway network to ensure that a well-connected series of collector roadways exists within the one-mile arterial grid. Collector streets should offer easy access to and from various neighborhoods and non-residential developments in order to reduce the need to access arterial roadways.
2. Community-scaled roadways should be planned to maximize specific characters or amenities within the Northwest Sector. This could include, but not be limited to rural arterial classifications, a hierarchy of collector street types, single loaded roadways (roadways with development on one side and natural areas on the other), and refinements to road placement to maximize natural features.
3. Utilize sound street design principles (context-sensitive design, complete streets) to establish a roadway network that moves vehicular traffic with a high-quality level of service while offering safe mobility opportunities for pedestrians and bicyclists.

The Northwest Sector Streets Policy (Streets Policy) is intended to implement the vision of the Northwest Sector of McKinney, primarily as it relates to the role of the transportation network. ***The purpose of this policy is to address streets at the collector and local level in order to better influence the structural fabric (i.e., street network) that creates great places and helps newly developed areas sustain value over time.*** As such, this Policy should be used to guide the City in updates to relevant ordinances, design manuals and other regulations. Private developers should use this Policy and the principles set forth within it to better understand the desired goals of the City for the Northwest Sector of McKinney.

The foundation of this policy is a fundamental recognition that local classification streets should be differentiated by their purpose – *link* or *place*. Streets that are intentionally designed as *places* or as *links* enable a better integration of a coherent street network into a transportation system

that is attuned to the desired development patterns of a given area and can move traffic both locally and regionally with options for a person's preferred mode of transportation. In other words, recognizing the difference between streets that are place-focused and those that are link-focused can result in a more intentional creation of a network of streets, rather than a series of seemingly disconnected roadways.

II. Approach

The Northwest Sector Streets Policy should provide decision makers with the necessary tool for making informed decisions about the design and function of proposed collector and local streets in McKinney. As such, this policy outlines the following approach:

1. **Northwest Sector Street Network Criteria.** This policy establishes a clear set of priorities that should guide how local streets are planned, designed and constructed.
2. **Street Types.** Standard cross sections should be established to allow necessary flexibility in the design of streets so that those streets can achieve the goals of this Policy and be tailored to specific land uses and development patterns.
3. **Fundamental Connectivity Framework.** The function of streets (i.e. link or place) and their relationships to each other both within a neighborhood and to other areas should be fundamentally described for proposed development projects.

Northwest Sector Street Network Criteria

The following priorities and outcomes shall guide the development of streets at the local and collector level:

- Local and collector streets should serve principally to provide neighborhood connections within and between subdivisions.
- Neighborhoods shall aim to be connected to one another through a woven street system that offers multiple external access points.
- The street network created by local and collector streets should encourage a mix of premium lot types, including cul-de-sac lots, lots fronting to neighborhood amenities or lots backing to open space. Cul-de-sacs in particular should be used when the presence of physical barriers exist that limit the ability to complete a connection.
- Walking and cycling should be a convenient option of movement within the network in terms of safety and efficiency.

- Local streets should provide access to residential property, small commercial areas and community amenities such as schools, parks and churches.
- Collector streets should provide access from local streets to arterials and to commercial areas.
- Place-focused streets should incorporate frequent intersections and short block lengths to make travel routes more efficient and improve walkability.
- The street network created by local and collector streets should balance efficient travel with appropriate speeds.
- Connections should be assigned within a network in conjunction with an overall connectivity strategy, rather than just to link *ad hoc* elements of subdivisions.
- Bicycle accommodations should be provided in accordance with the On-Street Bicycle Master Plan.
- Streets should follow natural features such as creekbeds and topography, as appropriate.
- Linkages between streets, alleys and trails should be purposeful and integrated into the transportation network.
- Streets should preserve or create viewsheds to natural features, amenities, landmark buildings or other important features.

Street Types

Using existing McKinney Street Classifications (from the 2010 Street Design Manual), a more nuanced set of street types should be introduced within the local street classifications. These new street types should still generally function as collector or local streets, but should be better defined by their functional purpose. Nomenclature for these streets should instead be described as "Neighborhood Street Types" (as opposed to Collector) and "Local Street Types" (as opposed to Residential).

Current Street Classifications

Classification	Street Type	Designation
Arterial Roadways	Principal Arterial	P6D
	Major Arterial	M6D
	Greenway Arterial	G4D
	Minor Arterial (divided)	M4D
	Minor Arterial (undivided)	M5U
	Minor Arterial (undivided)	M4U
	Minor Arterial / Frontage Roads	M3U
Local Streets	Collector	C2U
	Residential	R2U
Alleys	Residential Alley	RA

Recommended Street Classifications

Classification	Street Type	Designation
Arterial Roadways	Principal Arterial	P6D
	Major Arterial	M6D
	Greenway Arterial	G4D
	Minor Arterial (divided)	M4D
	Minor Arterial (undivided)	M5U
	Minor Arterial (undivided)	M4U
	Minor Arterial / Frontage Roads	M3U
Neighborhood Streets	Neighborhood Link (Major)	NL4
	Neighborhood Link (Minor)	NL2
	Neighborhood Place	NP
Local Streets	Local Link	LL
	Local Place	LP
	Rural/Estate	RE
Alleys	Residential Alleys	RA

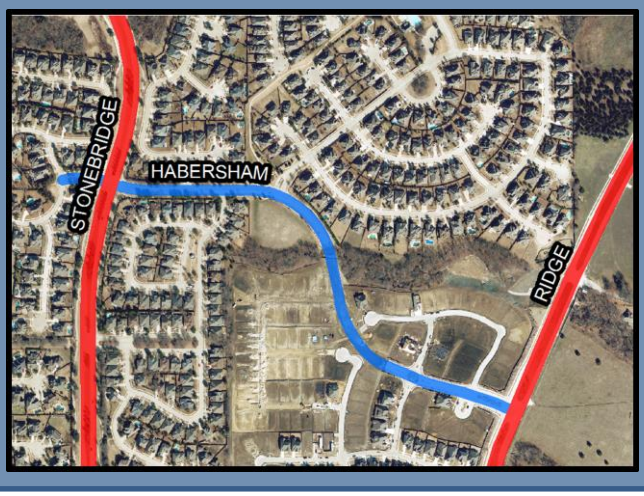
Similar to current collector streets, the principal purpose of Neighborhood Streets should still be to collect and distribute traffic in order to provide access to and through a neighborhood as well as neighborhood amenities and to arterial roadways. Similar to current residential streets, the principal purpose of Local Streets should still be to provide a higher level of residential and small commercial property access, with narrower traffic lanes and slower speeds. However, standard cross sections for Neighborhood and Local Streets should be established to allow necessary flexibility in the design of each street so that they can achieve the goals of this Policy and be contextually appropriate for the land uses and development patterns that they serve.

More detail about the new street types is as follows:

Neighborhood Link – Major

Primarily provides access to and through a neighborhood or between neighborhoods from arterials. This street typically has four lanes and could act as a 'grand boulevard,' connecting arterials within a development or as an entry feature. This street is similar to the City's existing M4U or M4D arterial roadway, such as Glen Oaks Drive.

Neighborhood Link – Minor



Primarily provides connectivity to and through a neighborhood or between neighborhoods from arterials. This roadway is typically 2 lanes and can also be a good connector to arterials within a development. An example of this street type in McKinney is Habersham Way.

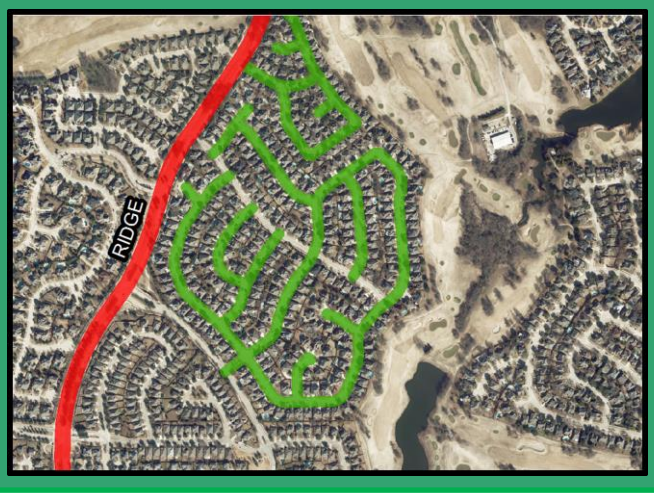
Neighborhood Place

This street is typically 2 lanes and provides access while also creating a context for adjacent destination development such as mixed use centers or more dense residential areas. This would be ideal for a mixed use center with retail, commercial and urban residential development adjacent.

Local Link

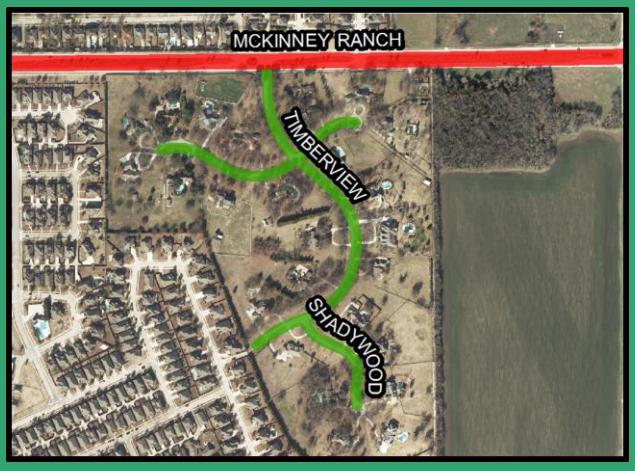
Primarily provides local access within a neighborhood, providing connections between neighborhoods or facilitating access from a neighborhood to a significant public space destination. This roadway would be ideal as a neighborhood road that connects to local destinations such as schools, parks, churches or amenity centers. Some existing streets in McKinney that serve as Local Links are Wolford Street and Dowell Street.

Local Place



Primarily provides fine-grained access for all modes of transportation. This street type would be ideal for residential neighborhood development and small commercial streets. Most residential streets in McKinney are representative of the Local Place street type.

Local Rural / Estate



Provides access to estate lots within a rural context. Drainage would be handled through swale systems and sidewalks will be optional on this street.

		Parkway		Travel Way			
	Street Type	Furnishing Zone	Pedestrian Zone	Number of Lanes	On-Street Parking	Bicycle Accomodations*	Median
Neighborhood Streets	**Neighborhood Link (Major)**	Landscaping required, with streetscape features** optional	Sidewalk or trail on one side	4	Not Permitted	Required in accordance with the On-Street Bicycle Master Plan	Permitted
	Neighborhood Link (Minor)	Landscaping required, with streetscape features** optional	Sidewalk or trail on one side	2	Not Permitted	Required in accordance with the On-Street Bicycle Master Plan	Permitted
	Neighborhood Place	Landscaping or hardscaping with streetscape features** required	Sidewalk or trail on both sides	2	Permitted in designated spaces	Required in accordance with the On-Street Bicycle Master Plan	Permitted
Local Streets	**Local Link**	Landscaping required, with streetscape features** optional	Sidewalk or trail on one side	2	Permitted in designated spaces	N/A	Permitted
	Local Place	Landscaping or hardscaping with streetscape features** required	Sidewalk on both sides	2-way yield	Permitted	N/A	Not Permitted
	Rural / Estate	Drainage swale	None required	2-way yield	Permitted	N/A	Not Permitted

**Typical accomodation includes signage and/or sharrow on at least on Neighborhood Street in a given development.*
***Streetscape features include amenities such as trees, street lights and benches*

Fundamental Connectivity Framework

While the design of a street itself can contribute to achieving the goals of the overall Network Criteria, the location of these streets within a development are equally important. As such, a fundamental connectivity framework should be understood/reviewed for each individual development project. Its purpose should be to establish the basic elements of a neighborhood in terms of access points as well as those locations within the neighborhood that would be aligned with link-focused streets or place-focused streets.

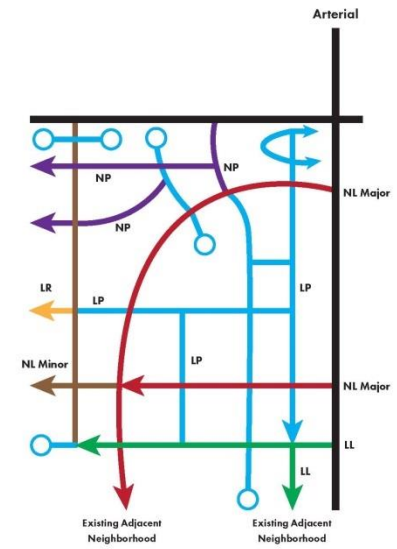
However, this Policy recognizes that the ability to establish a detailed fundamental connectivity framework may be largely dependent on the size and proposed use of a specific project.

The general elements that should be reviewed for a projects fundamental connectivity framework should include:

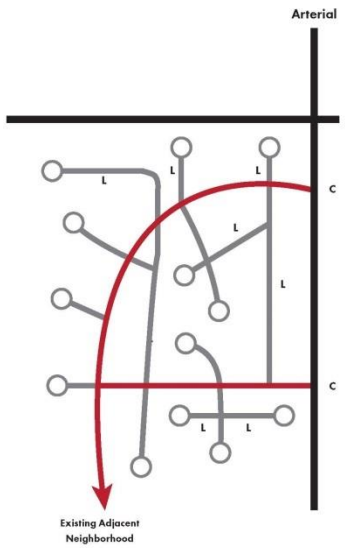
1. A clear illustration of the proposed street network, including the designation of functional purpose of each street as Neighborhood Link (Major), Neighborhood Link (Minor), Neighborhood Place, Local Link, Local Place or Local Rural / Estate.
2. Connections to:
    a. Arterial roadways and key perimeter roadways.
    b. Adjacent neighborhoods or areas of dense development (existing or planned).
    c. Significant destination opens spaces/parks, as applicable.
    d. Natural assets such as parks and natural preserves.
    e. Neighborhood-scale local amenities and destinations.
3. Proposed street cross sections, including travel way and parkway elements. Design for proposed cross sections should contribute to the desired environment of the proposed development in terms of the necessary pedestrian amenities, on-street parking, frequency of intersections, likely future opportunities for transit, etc.

The diagram below demonstrates how a more nuanced set of street types paired with network criteria can more purposefully result in an improved fundamental connectivity framework (a more well-connected neighborhood), compared to the *ad hoc* application of two simple street types (local and collector streets) in a project to simply move traffic.

Fundamental Connectivity Framework Based on Proposed Policy



Fundamental Connectivity Framework Based on Status Quo



Next Steps

In order to fully implement this policy, the following should be undertaken:

1. **Modify the City's Street Design Manual and Subdivision Ordinance.** The City should update and revise the Street Design Manual as well as the Subdivision Ordinance to incorporate the elements of this Policy.

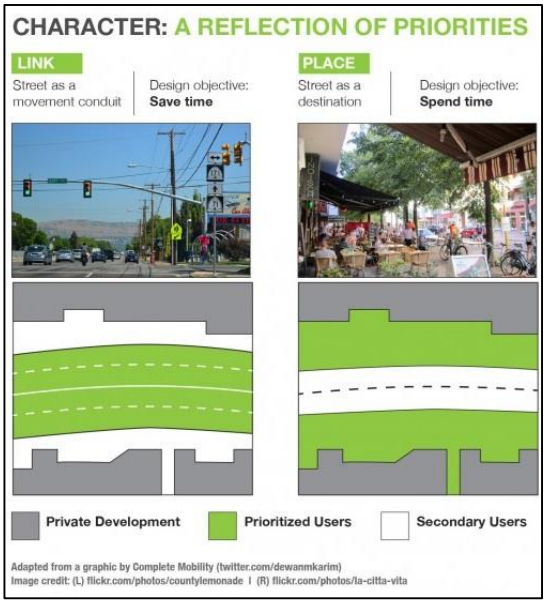
2. **Calibrate the Zoning Ordinance to reflect standards that achieve the goals of this policy.** This will enable predictable outcomes of both neighborhood character and traffic throughout the development process, from planning and zoning through subdivision and permitting. Modifications to the Zoning Ordinance should focus on the relationship between the streets and their development pattern context.

3. **Establish a development review process that accounts for the street network as it relates to the context of particular development types.** This will ensure that new development meets the network and street design goals of the City.

Benefits

This Streets Policy involves more than just technical elements, which often themselves do not add up to an intended outcome. Rather, the Northwest Sector Streets Policy includes a holistic approach and guidance for growth outcomes and, correspondingly, direction for all departments responsible for those outcomes including life-safety, engineering, planning, parks, public works, finance, etc. The resulting benefits from this approach can include:

1. **Make clear the role of a street as either primarily place-focused or primarily a commuter connection (i.e., a link).** When streets within a community are designed *ad hoc* based on each particular project and within a limited design family, they tend to serve an ambiguous function and sometimes fail to meet the desired goal of safety, context and playing a meaningful role as part of a balanced modal system. The graphic below shows the difference between streets that are intentionally designed as *places* or to serve as *links*. This distinction enables the integration of a coherent street network into a transportation system that is calibrated to the desired development patterns of a given area and, at the same time, is designed to move traffic both locally and regionally with options for a person's preferred mode of transportation. It is important to note that while the "place" image in the graphic is representative of an urban space, the concept of a sense of place is applicable to all development types, including suburban and even rural.



2. **Encourage high-quality places through a diversity of place types.** A better pattern of streets can lead to higher-quality places. By

developing the appropriate transportation framework and merging that framework with the policy for these high-quality places, a diversity of land uses, development patterns and transportation modes (i.e., walking, transit, biking and driving) can be intentionally related so that the vision for the Northwest Sector and other areas of McKinney can be predictably realized.

3. **Create alignment between fire, safety, traffic management and development pattern goals.** A strong alignment between the departments responsible for these goals will ensure a streamlined process for design and development review as projects move forward citywide. Clear requirements that are based on the intent to create a comprehensive network, while ensuring sustainable traffic patterns can facilitate a streamlined review process and align the City's different department priorities.

4. **Provide realistic guidance that is mutually beneficial for the development community and the City.** The qualitative and quantitative basis of this Streets Policy is grounded in best practices from the Institute of Transportation Engineers (ITE) *Designing Walkable Urban Thoroughfares* Manual, the National Association of City Transportation Officials (NACTO) *Urban Street Design Guide*, the AASHTO *Guide for the Development of Bicycle Facilities*, and the NACTO *Urban Bikeway Design Guide.* This Policy will help the development community to better understand the goals of the City: a network of streets at the Local and Collector ("Neighborhood") level that provides safe, efficient transportation options while adding to the quality of the adjacent land.

III. Policy Limitations and Special Considerations

While this Policy is intended to improve several aspects of development in the Northwest Sector and throughout McKinney, it is important to note its limitations. The Northwest Sector Streets Policy will not:

1. **Provide exact dimensions for a given street application.** This Streets Policy provides a matrix of design guidance for each respective street type and its particular purpose, rather than attempting to create every specific detailed application for any possible scenario. The design guidance approach, rather than a set of non-flexible prescribed cross-sections, will enable the development of streets and a street network — for a series of neighborhoods or a given neighborhood — that are better calibrated to the needs of the desired development pattern.

2. **Alter the Master Thoroughfare Plan (MTP) at the Arterial Level.** The Streets Policy will work within the larger framework of the existing MTP; yet it will modify how the MTP functions below the arterial level in order to accomplish the incorporation of place-focused streets and connector-focused streets into a coherent network for a given area.

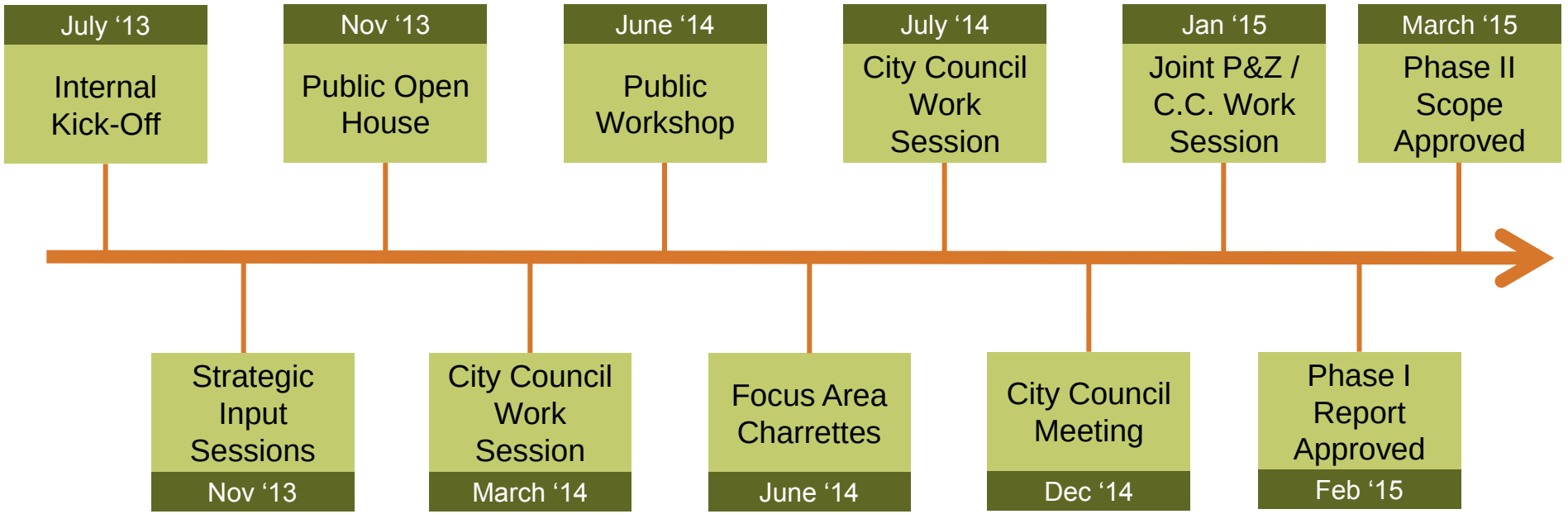
3. **Address every unique circumstance that may occur in the development process.** While the priorities of this Streets Policy are intended to be applicable in all developments, certain situations may arise in which alternative solutions are necessary. For example, access management techniques may be utilized in order to accommodate expected traffic volumes or to provide consistency in traffic operations.

   Some conditions of the application of any new street types may result in anomalies such as single-family residential uses that front Collector (now "Neighborhood") or Arterial streets. In that case, additional design strategies may need to be applied. For example, a "slip" lane can be utilized to create a limited access condition along a roadway while also creating a convenient and urbane frontage along the development. This idea has already been employed successfully in McKinney along Eldorado Parkway, near Country Club Drive.

4. **Change the basic function of streets at the Local and Collector Level.** Already stated within the City's Street Design Manual, the primary functional purpose of local and collector streets is to provide access as opposed to high mobility, which is the primary role of arterials. This Streets Policy desires to balance Quality of Service (QOS) within a neighborhood or specific development location with the Level of Service (LOS) that is measured at the arterial level of the City's transportation

framework. The Quality of Service perspective provides a basis for building a street network within the context of the place in order to achieve a higher-quality development pattern in a given area while also creating better access. Application of a Quality of Service approach supports traditional and urban walkable developments even though the traditional LOS rating could be lower for a given location.

The Northwest Sector Study Initiative



Northwest Sector Study: Phase II

Northwest Sector Streets Policy

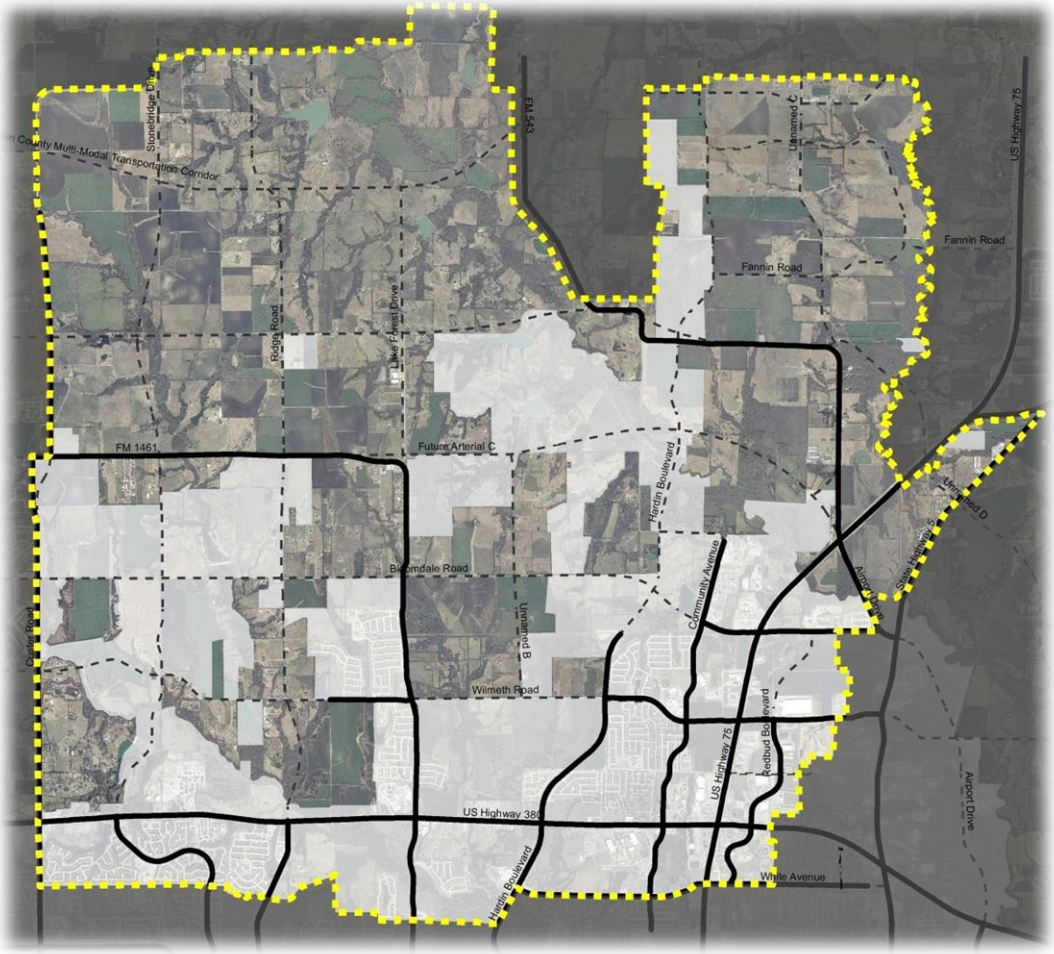
November 16, 2015

- MONEY MAGAZINE 2014 -

Where is the Northwest Sector?

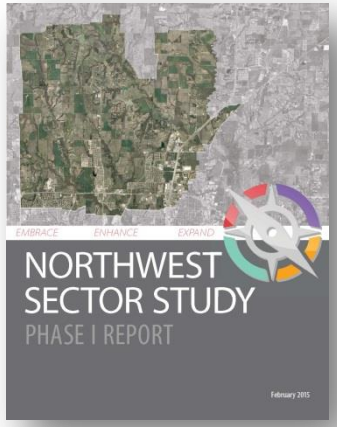
- 30,000 +/- acres generally north of US 380 and west of US 75

- 42 percent lies within city limits; 58 percent lies within the Extra Territorial Jurisdiction (ETJ)



Northwest Sector Study Phase I Report

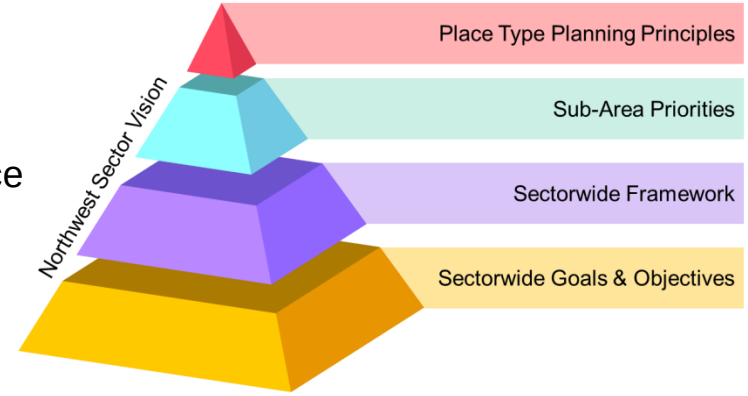
Created a vision for the Northwest Sector to guide the pattern of growth and desired development quality over the near, mid, and long term.



Approved February 17, 2015
(Resolution No. 2015-02-022 R)

Key components of the vision:

- Balanced Tax Base
- Compatible Land Use / Mobility Relationships
- Quality Placemaking
- Embraced Natural Landscape
- Market Readiness and Adaptability
- Implementation
- Improved Residential-Commercial Interactions
- Improved Neighborhood Patterns
- Protection, Integration and Maximization of Open Space
- Improved Walkability and Connectivity
- Balanced and Purposeful Integration of Mixed Use
- Multimodal Connectivity



Phase II Action Plan

Evaluate, craft, select, relate, and phase the appropriate implementation components into a comprehensive implementation program or Action Plan, including:

TASK 1. Market analysis and creation of locational criteria *(complete)*

TASK 2. Creation of a local street typology strategy/policy *(underway)*

TASK 3. Approach for orderly growth & annexation strategies *(underway)*

TASK 4. The analysis of and proposed amendments to development regulations in the Northwest Sector *(TBD)*

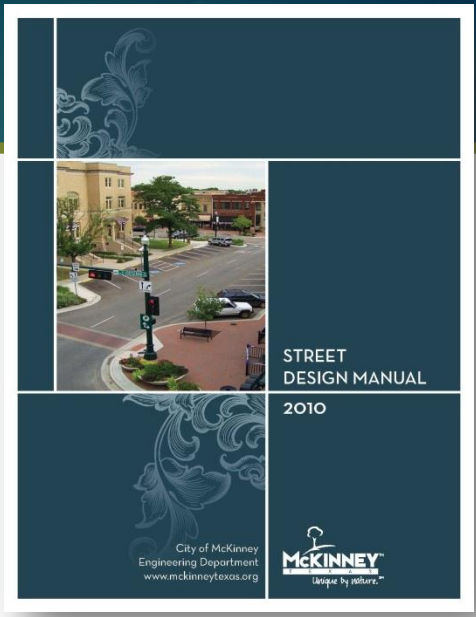
TASK 5. The creation of an infrastructure financing policy *(TBD)*

Why Create a Streets Policy?

The NWS Phase I Report outlines a number of recommendations related to transportation, mobility and streets:

1. Design transportation infrastructure that supports a compatible land use/mobility relationship.
2. More refined planning and management of the collector roadway network to ensure a well-connected series of collector roadways exists within the one-mile arterial grid.
3. Community-scaled roadways should be planned to maximize specific characters or amenities within the Northwest Sector.
4. Utilize sound street design principles.
5. Provide an effective/efficient transportation network.
6. Improve walkability within and between neighborhoods.

Current Street Design Manual



3.1 Functional Classification

Functional roadway classifications define the role of each type of thoroughfare and reflect a set of characteristics that are common to all roadways within each classification. This translates into physical design features concerning cross section, vertical and horizontal alignment standards, pavement width, access management, etc.

Access and mobility are the two functions considered when classifying a roadway. Mobility refers to the movement of traffic, both in terms of speed and capacity, and access refers to the accessibility of adjacent properties from the particular street. The two functions are inversely related; meaning that as access increases, mobility decreases. The hierarchy of streets with respect to their functional classification is listed below.

- **Principal Arterials** – high mobility, limited access
- **Minor Arterials** – moderate mobility, limited access
- **Collectors** – moderate mobility, moderate access
- **Local Streets** – limited mobility, high access

Figure 3-1 graphically depicts the relationship between the hierarchical functional classifications and the balance between access and mobility. Local streets provide the most access to adjacent properties, with reduced capacity and speed. Conversely, arterials have a limited number of intersections and curb cuts so traffic movements are not impeded, increasing mobility and limiting access.

Advantages of applying functional classification to design principals include preservation of residential neighborhoods, long term stability in land use patterns, value of commercial properties, fewer traffic accidents, and a decreased proportion of urban land devoted to streets. In areas developed in accordance with functional circulation concepts, approximately 20 percent of the urban land is devoted to streets, including arterials, while in a typical grid system, 30 percent or more is tied up in streets.

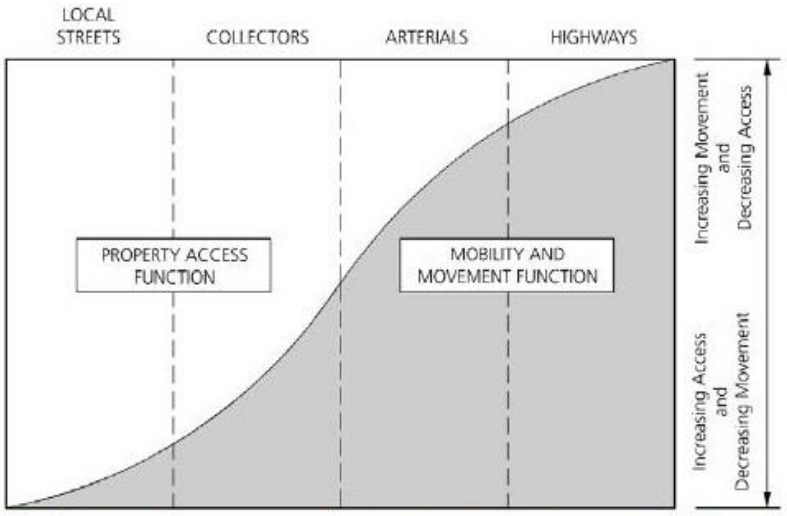
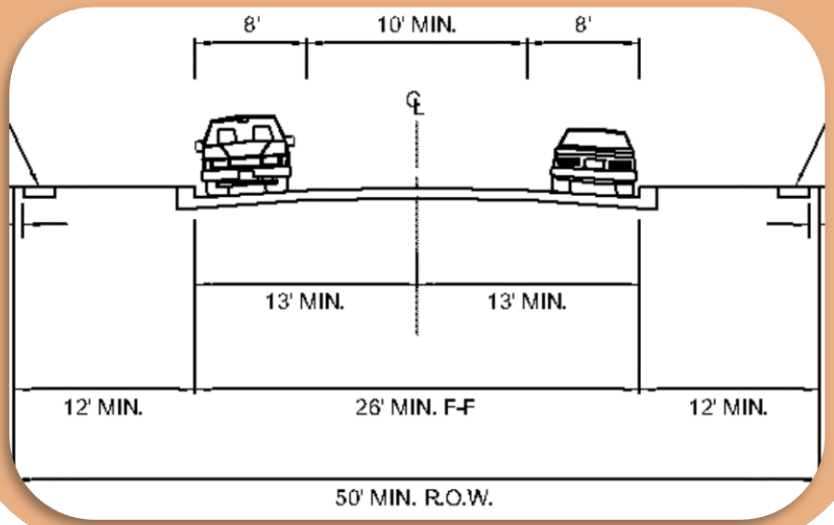


FIGURE 3-1 – FUNCTIONAL CLASSIFICATION OF STREETS

Street Design Manual:
Local and Collector Street Types

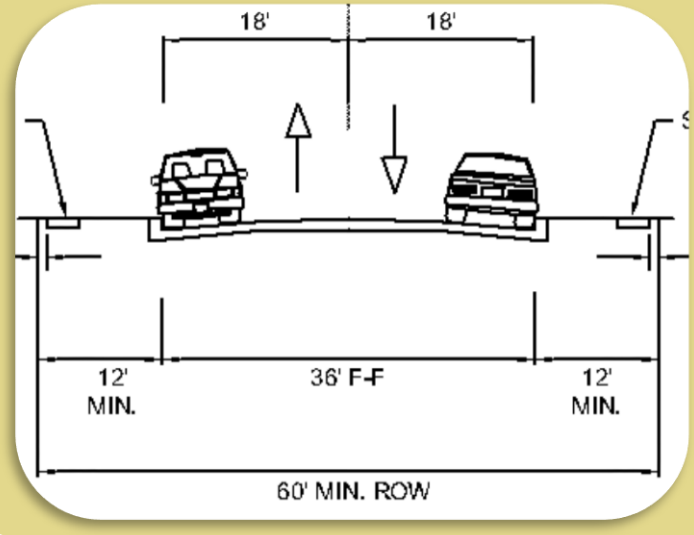
Local / Residential

- Purpose is to “provide access from groups of housing units within a neighborhood to collector streets.”
- 50’ minimum ROW
- 8’ parking on both sides
- Single lane of travel
- 26’ curb face-to-curb face



Collector

- Purpose is to “collect and distribute traffic from local access streets and convey it to the arterial system.”
- 60’ minimum ROW
- 8’ parking on both sides
- 10’ drive space both sides
- 36’ curb face-to-curb face



Proposed Northwest Sector Streets Policy

*Central to the proposed policy is the recognition that local and collector streets should be differentiated by their purpose – **link** or **place**.*

The proposed policy outlines the following approach:

1. **Northwest Sector Street Network Criteria:** Establishes a clear set of priorities that should guide how collector and residential streets are planned, designed and constructed.

2. **Street Types:** Identifies a new set of local street types and states that standard cross sections should be established to allow necessary flexibility in their design so that they can achieve the goals of the street network criteria and be tailored to specific land uses and development patterns.

3. **Fundamental Connectivity Framework:** The function of streets (as link-focused or place-focused) and their relationships to each other within a neighborhood and to other areas should be fundamentally described for proposed development projects.

2. Street Types

Current Street Classifications

Classification	Street Type	Designation
Arterial Roadways	Principal Arterial	P6D
	Major Arterial	M6D
	Greenway Arterial	G4D
	Minor Arterial (divided)	M4D
	Minor Arterial (undivided)	M5U
	Minor Arterial (undivided)	M4U
	Minor Arterial / Frontage Roads	M3U
Local Streets	Collector	C2U
	Residential	R2U
Alleys	Residential Alley	RA

Recommended Street Classifications

Classification	Street Type	Designation
Arterial Roadways	Principal Arterial	P6D
	Major Arterial	M6D
	Greenway Arterial	G4D
	Minor Arterial (divided)	M4D
	Minor Arterial (undivided)	M5U
	Minor Arterial (undivided)	M4U
	Minor Arterial / Frontage Roads	M3U
Neighborhood Streets	Neighborhood Link (Major)	NL4
	Neighborhood Link (Minor)	NL2
	Neighborhood Place	NP
Local Streets	Local Link	LL
	Local Place	LP
	Rural/Estate	RE
Alleys	Residential Alleys	RA

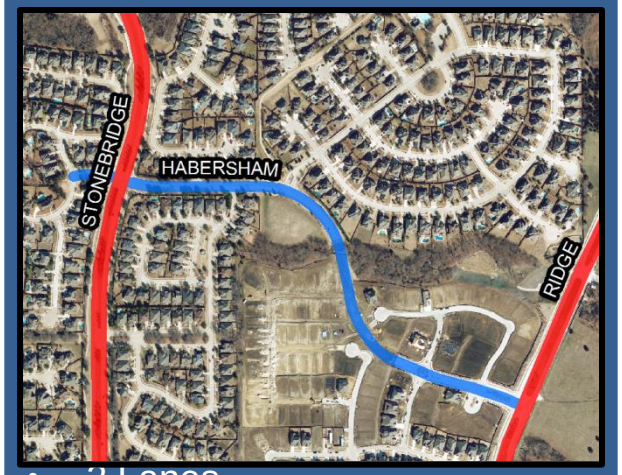
2. Street Types

Neighborhood Streets

Neighborhood Link (Major)

- 4 Lanes
- Median allowed
- No on-street parking
- Used to connect arterials within one or between multiple areas
- Similar to City's M4U and M4D arterial roadway (Glen Oaks Drive)

Neighborhood Link (Minor)



- 2 Lanes
- Median allowed
- No on-street parking
- Used to connect arterials within one or between multiple areas
- Habersham Way between Stonebridge Drive and Ridge Road

Neighborhood Place

- 2 Lanes
- On-street parking in designated spaces
- Used to anchor mixed-use centers
- Similar to Mediterranean Drive in Adriatica

2. Street Types

Local Streets

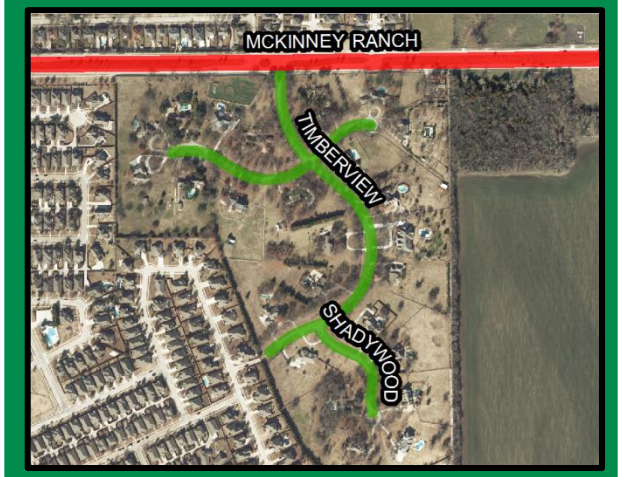
Local Link

- 2 Lanes
- On-street parking in designated spaces
- Access within a neighborhood to community destinations (schools, churches, etc.)
- Wolford Street, Dowell Street and Carlisle Street between Virginia Pkwy & Bois D'Arc Rd

Local Place

- 2 Way Yield
- On-street parking allowed
- Best used as a typical residential street
- Most residential streets currently in McKinney meet this description

Local Rural / Estate

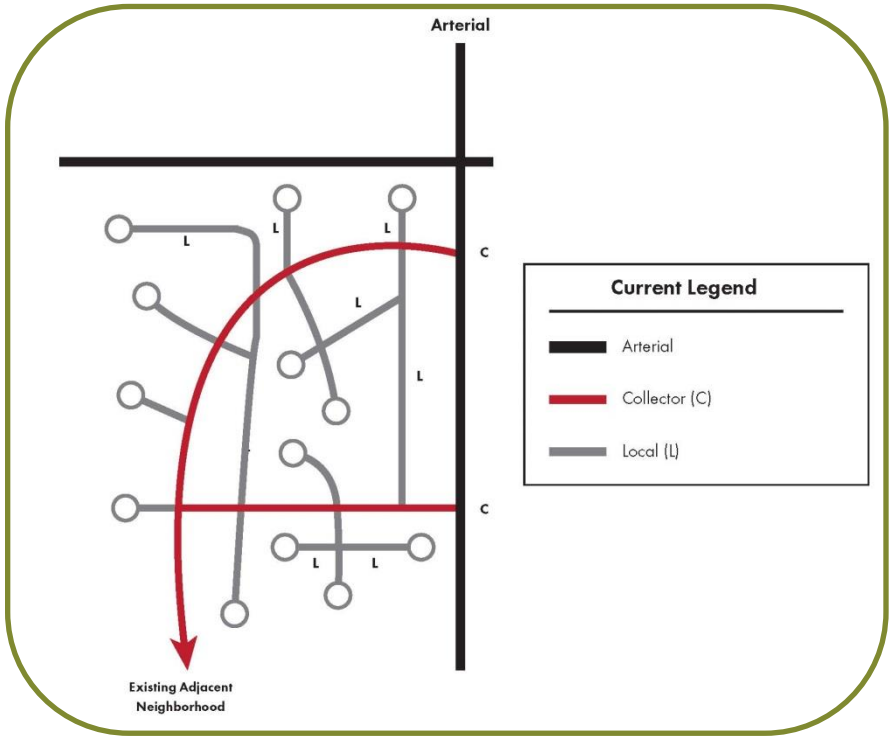


- 2 Way Yield
- On-street parking allowed
- Used to create a rural or 'less-developed' sense of place for a residential neighborhood
- Similar to Timberview, Meadow Hill and Shadywood south of McKinney Ranch Parkway

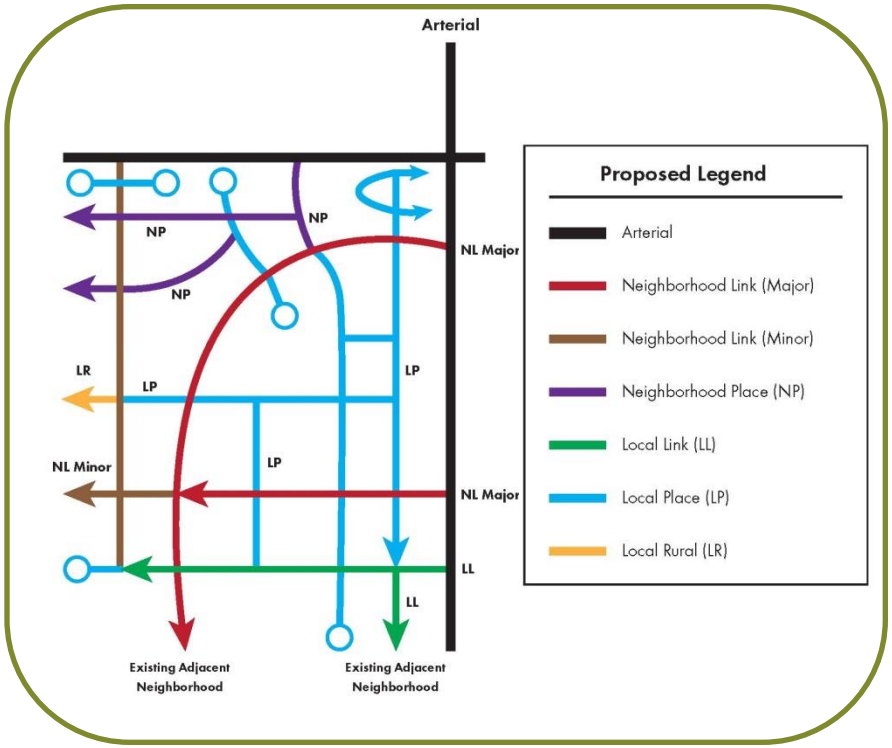
3. Fundamental Connectivity Framework

Establish a development review process that accounts for the street network as it relates to the context of a particular development.

Under Status Quo



Under Proposed Policy



GATEWAY PLANNING

Limitations vs Solutions

Limitations of the Current System	Solutions Created by Streets Policy
Does not inherently promote connectivity between neighborhoods; ad hoc development of roadways	Connectivity Plan that designates roadway types and connections
Only two cross sections essentially creates a ‘one size fits all’ situation	Wider range of options from which to choose
Any requested variance results in a negotiation process	Greater predictability combined with flexibility given by a range of options

Potential Implications

- New system of thought on roadways – may take time to implement
- Some requirements have potential for higher costs (City & Developer)
- More nuanced design required at an earlier stage of development

Next Steps

Winter 2015

- Present proposed Northwest Sector Streets Policy to the Development Advocacy Group of MEDC

- Present proposed Northwest Sector Streets Policy to City Council for potential action

Spring 2015

- If adopted, begin revision process to the Street Design Manual and other relevant regulations.

In light of the ongoing efforts with the ONE McKinney 2040 Comprehensive Plan Update, Staff will be coordinating with the consultant team to discuss the remaining Northwest Sector Phase II tasks (regulatory review and infrastructure financing policy), their timing, and the potential for maximizing those tasks and the remaining professional services related to Phase II of the Northwest Sector.

15-1069

TITLE: Presentation by Texoma Area Paratransit System (TAPS) Regarding City of McKinney Transit Operations

COUNCIL GOAL: Operational Excellence
Financially Sound Government

MEETING DATE: November 16, 2015

DEPARTMENT: City Manager

CONTACT: Tom Muehlenbeck, Interim City Manager

RECOMMENDED CITY COUNCIL ACTION: Receive Information

ITEM SUMMARY:

- The TAPS Board authorized City Staff to work with the TAPS Staff to propose the amended routes.
- With City Council's approval on November 17th, City Staff will work with TAPS staff to implement the new routes and make all adjustments to stop locations.
- The current proposal includes reduction from seven fixed routes to four fixed routes.
- All proposed routes, ADA Paratransit service, and on demand service will only be available Monday through Friday.
- At this time, the proposed demand response service will be limited to trips within the City of McKinney and only available to elderly and the disabled riders.
- ADA Paratransit service will be available for all qualified disabled individuals within 0.75 miles of the proposed fixed routes. To qualify for the ADA Paratransit service, the origin and the destination must be within the fixed .075 mile corridor.
- TAPS would like to implement these fixed routes by December 1, 2015.

BACKGROUND INFORMATION:

- At the May 7, 2013 City Council Meeting the City Council approved a Resolution designating TAPS as the Direct Recipient and the Urban Transit District for the McKinney UZA, contingent upon the successful negotiation of an ILA.
- On May 21, 2013, City Council authorized the execution of the ILA for the period

of June 15, 2013 to May 31, 2015.

FINANCIAL SUMMARY: N/A

BOARD OR COMMISSION RECOMMENDATION: N/A

SUPPORTING MATERIALS:

TAPS Proposed Routes

TAPS
Proposed McKinney Routes

0 ½ 1 Miles

- Paratransit Corridor
- Route 100
- Route 200
- Route 300
- Route 400

Proposed Feeder Routes:

Anna, Celina, Farmersvilled, Frisco, Melissa, Murphy, Prosper, Plano (S. Hub), Princeton

15-1148

TITLE: Discuss and Provide Direction to Staff Regarding Proposed Revisions to the Floodplain Amendment Process

COUNCIL GOAL: Operational Excellence

MEETING DATE: November 16, 2015

DEPARTMENT: Development Services / Engineering

CONTACT: Mark Hines, P.E., Director of Engineering

RECOMMENDED CITY COUNCIL ACTION:

- Provide direction to Staff regarding proposed revisions.

ITEM SUMMARY:

- In cooperation with the Development Community, Staff has prepared an alternative to the current procedure for amending the FEMA floodplain maps. City Council was supportive of the concept at the October 5, 2015 Work Session (Agenda Item 15-954). Staff has continued to work with the Development Community since that time and are close to finalizing the amendments that will eventually be forwarded to the City Council for action. Staff wanted to ensure that the City Council is still comfortable with the direction of the proposed amendments. Pending direction from the City Council, Staff plans to present the ordinance amendments for approval at the December 1, 2015 Council Meeting.

BACKGROUND INFORMATION:

- Discussion took place at the October 5 Council meeting regarding protection of home buyers from risk. The Development Community has proposed protection via a pre-paid flood insurance policy for a period of two (2) years from the submission of the Letter of Map Revision (LOMR) to FEMA.
- While risk of going beyond two years does exist, it is minimal. Staff has not seen approval delayed by more than two years.

FINANCIAL SUMMARY: NA

BOARD OR COMMISSION RECOMMENDATION: NA

SUPPORTING MATERIALS:

Draft Ordinance

Sec. 130-384. Verification of floodplain alterations.

(a) Prior to final city acceptance of utilities and street construction for projects involving floodplain alterations or adjacent to defined floodplains, creeks, channels, and drainageways, a certified statement shall be prepared by a registered professional land surveyor, showing that all lot elevations, as developed within the subject project, meet or exceed the required minimum finished pad elevations necessary to create the minimum finished floor elevations as shown on the record plat of the subdivision. This certification shall be filed with the director of engineering.

(b) In addition, at any time in the future when a building permit is desired for an existing platted property, which is subject to flooding or carries a specified or recorded minimum finished floor elevation, a registered professional land surveyor or a registered professional engineer shall prepare a certified statement that sites are built to the design elevations. The certified survey data showing the property to be at or above the specified elevation shall be furnished to the Chief Building Official for approval. A certificate of compliance with the provisions of this article, pertaining to specified finished floor elevations, shall be required.

(c) The applicants shall furnish, at their expense, to the director of engineering the above certifications and any other certified engineering and surveying information requested by the director of engineering to confirm that the required minimum floor and pad elevations have been achieved. Except as provided in subsection (d) below, building~~Building~~ permits will not be issued until:

(1) A letter of map revision or amendment has been issued by FEMA; and

(2) Lots and/or sites are certified by a registered professional land surveyor or a registered professional engineer that they are elevated from the floodplain according to FEMA-approved revisions to the floodplain and the requirements of this article.

(Code 1982, § 37-204; Ord. No. 99-04-39, art. 8, § D, 4-20-1999; Ord. No. 2006-12-145, § 1, 12-19-2006; Ord. No. 2009-05-027, § 12, 5-5-09)

(d) As an alternative to the above requirements the following procedure may be used to obtain subdivision acceptance, record a final plat which includes the lot and obtain a building permit for a lot within an area shown as flood plain on an existing FEMA map that is proposed to be reclaimed pursuant and prior to an approved Letter of Map Revision (LOMR):

1. A City reviewed and approved CLOMR must have been submitted to and approved by FEMA.
2. The infrastructure must have been constructed in accordance with plans and specifications, accepted by the City, and in substantial conformance with the FEMA-approved CLOMR as determined by the Floodplain Administrator~~compliance with the CLOMR as approved~~.
3. A LOMR must have been submitted to and approved by the City, and then submitted to and receipt acknowledged by FEMA.

4. A record plat that includes the lot must have been approved that includes ~~only~~ the proposed revised floodplain line (the floodplain line on the effective FEMA map will not be shown) and the following form of note prominently affixed on the record plat: *The floodplain line shown on this plat represents that which has been designated on a FEMA-approved CLOMR Number X-XXXX, for which a LOMR has been submitted and after approval of which will become the effective FEMA floodplain delineation.* ~~with a prominent note (approved by the City Attorney) indicating that the floodplain line is per a FEMA approved CLOMR Number X-XXXX, with a LOMR that is pending approval, and that the revised line will be in effect when the LOMR goes into effect.~~
5. An elevation certificate must have been issued confirming that the pad elevation for the lot is at or above the proposed adjacent base flood elevation shown on the submitted LOMR.
6. The developer must present to the City a signed affidavit which affirms that the proposed lot is currently within the flood plain as shown on the effective~~existing~~ FEMA map and that flood insurance must be obtained and maintained in order to receive a final green tag or certificate of occupancy prior to ~~until~~ the effective date of FEMA approval of the LOMR.
7. An agreement must be entered into between the City and the developer that contains the following provisions and attachments:

    (a) An executed engineering contract between the developer and its engineer covering the scope of services required to complete the LOMR process (the "Engineering Contract"), conditionally assigned to the City~~.~~;

    (b) An escrow of funds/bond in an amount equal to 120% of the cost of the work remaining under the Engineering Contract relating to the LOMR process to ensure the completion of the LOMR process; and~~.~~

    (c) A provision indemnifying the City.

    ~~(c) A stipulation with appropriate financial guarantees acceptable to the City Legal Representative, that the developer will fund, or will cause its builder to fund, flood insurance for all habitable structures within the flood plain shown on the existing FEMA map until the effective date of the LOMR approval regardless of the time frame involved.~~

~~8. The developer or builder obtains flood insurance for each structure within the flood plain shown on the existing FEMA map at, or prior to, the issuance of a final green tag or certificate of occupancy.~~

~~9.~~8. In order to obtain a final green tag or certificate of occupancy as appropriate for a habitable structure on the lot, the following must be accomplished:

    (a) All other requirements for the final approval have been met;~~.~~

    (b) The record plat that includes the lot has been filed;

    (c) Proof that a policy of flood insurance written by an insurance company licensed to do business in the state of Texas and authorized to issue flood

insurance policies, prepaid for up to two (2) years as determined by the Director of Development Services, has been issued for all habitable structures on the lot .

9. Subsequent to issuance of a green tag or a certificate of occupancy but prior to a taking ownership of the property, the property buyer shall sign an affidavit

~~(c) Owners sign an~~ An affidavit ~~signed by the owner of record must be provided to the City~~ that acknowledges that (1)~~they understand~~ the improvements on the lot are located in an area shown on the effective~~existing~~ FEMA map as being in the flood-plain, (2) ~~and that~~ a Letter of Map Revision has been sent to FEMA which~~that~~, ~~when~~ if approved, will change the designated floodplain with the result that such improvements will no longer be shown as being in the floodplain, and (3) indemnify the City and assume the risk that if FEMA does not approve the Letter of Map Revision the improvements will continue to be shown as being in ~~remove the improvements on the lot from the flood plain, and that they understand that FEMA may not approve the LOMR, and if they do not the building will remain in~~ the floodplain~~, and (4) a policy of flood insurance written by an insurance company licensed to do business in the state of Texas and authorized to issue flood insurance policies, prepaid for up to two (2) years as determined by the Director of Development Services, has been issued for all habitable structures on the lot . .~~.

15-1125

TITLE: Discuss Virginia Parkway Lanes 5 & 6 from US 75 to Ridge Road

COUNCIL GOAL: Direction for Strategic Growth

MEETING DATE: November 16, 2015

DEPARTMENT: Development Services/Engineering

CONTACT: Gary Graham, PE, CIP and Transportation Engineering Manager

RECOMMENDED CITY COUNCIL ACTION:

- Confirm direction to proceed with construction.

ITEM SUMMARY:

- The City has plans to widen Virginia Parkway from US 75 to Ridge Road to provide three lanes in each direction, in order to accommodate increasing traffic needs, improve safety, and provide continuity for the corridor.

- The Engineering Department, at Council's request, has incorporated design elements at the intersections of Mallard Lakes Drive and Joplin Drive in response to public input and safety concerns.

- The Engineering Department seeks confirmation from Council to proceed with construction of these improvements as part of the widening project.

BACKGROUND INFORMATION:

- The Engineering Department has been working to complete the design of Virginia Parkway widening from Ridge Road to Us 75 in order to provide the ultimate lane configuration of a six lane divided arterial roadway, as designated in the Master Thoroughfare Plan.

- Design of the east section from Bellegrove Drive to US 75 began in late 2013, and the design contract was extended in 2014 to include the west section from Ridge Road to Bellegrove.

- In September 2014, the Engineering Department hosted a public information meeting where exhibits of the proposed widening project were displayed for public viewing and input.

- Residents attended the meeting and raised concerns for the roadway widening, specifically at the intersections with Mallard Lakes Drive and Joplin Drive.

- In November 2014, Staff presented a summary of the concerns to the City Council in order to confirm the direction of the project before proceeding with the design of the west section of Virginia Parkway widening.

- Council direction was to proceed with the design, and to return to Council to present the improvements proposed for addressing citizen concerns as part of the project. In addition to widening lanes 5 and 6, the following improvements are proposed:

    1. Traffic signal at the intersection of Virginia Parkway and Mallard Lakes Drive
    2. Completion of the Mallard Lakes Drive intersection north of Virginia Parkway
    3. Additional left turn lane and median opening west of Joplin to alleviate U-turn movements at Joplin
    4. Additional westbound right turn lane at Joplin Drive

- The additional construction cost associated with these improvements is estimated to be $425,000. Total project construction cost for widening Virginia Parkway from US 75 to Ridge Road, including the additional safety improvements, is estimated to be $13.2 million.

- The construction drawings are at the final stage of review, and the project is scheduled for bidding in January 2016, pending completion of ROW acquisition and the relocation of franchise utilities. The project will take approximately two years to construct.

- Funds are available in the project budget to construct the improvements as part of the widening project.

FINANCIAL SUMMARY: N/A

BOARD OR COMMISSION RECOMMENDATION: N/A

SUPPORTING MATERIALS:

2014-11-03 Staff Report
Presentation

..Title
Discuss Virginia Parkway Lanes 5 & 6 from Bellegrove Drive to Ridge Road

..Summary

MEETING DATE: November 3, 2014

DEPARTMENT: Development Services/Engineering

CONTACT: Gary Graham, PE, CIP and Transportation Engineering Manager
Carla Easton, PE, CIP Engineer

RECOMMENDED CITY COUNCIL ACTION:

- Discuss and provide direction.

ITEM SUMMARY:

- The City is developing plans to widen Virginia Parkway from US 75 to Ridge Road to provide three lanes in each direction, in order to accommodate increasing traffic needs, improve safety, and provide continuity for the corridor.

- The Engineering Department hosted a public information meeting with business owners, property owners and residents along Virginia, and received a number of comments and concerns regarding the project.

- A separate neighborhood meeting was requested by the residents of the Mallard Lakes subdivision, at which the City was asked to reconsider the widening project along Virginia at Mallard Lakes Drive (section from Bellegrove to Ridge).

- The Engineering Department seeks confirmation from Council to continue the widening project as approved in the 2012-2014 Council priorities list.

BACKGROUND INFORMATION:

- Virginia Parkway was identified as a priority project in 2012 due to capacity needs, safety concerns, and mobility for both local and regional travel.

- Traffic numbers on Virginia Parkway have steadily increased, and are nearing capacity for a four-lane roadway.

Current Volume:	24-26,000 vpd
Projected 2030:	32-37,000 vpd
M4D Capacity:	26-31,000 vpd
M6D Capacity:	35-38,000 vpd

- Safety issues arise when roadways reach volume capacity. Signalized intersections are unable to clear the number of cars queued during peak travel times, resulting in delay and frustration. Right turn movements impact the flow of

through traffic, because the progression must slow down for the turning vehicle, creating further delay.

- Virginia Parkway is designated as a major east-west arterial (M6D), providing both local and regional mobility across the City, and it aligns with a future arterial west of the City limits. As the western limits of McKinney continue to see infill development, and the neighboring cities see growth in this area, traffic will increase along Virginia Parkway.

- Virginia is currently six lanes from west of Stonebridge Drive to east of Ridge Road.

- In February 2012, Council and Staff identified the Virginia Parkway widening project as one of the top 5 priority projects, and ranked as shown below.
    - FM 546 Replacement
    - Virginia Parkway Widening East Section
    - Virginia Parkway Widening West Section
    - Stacy Road Widening
    - SH 5 Reconstruction

- A formal resolution was approved in March 2012 supporting the list of projects to be submitted as candidates to receive RTR funding from the NCTCOG.

- In August 2012, Collin County Commissioners Court selected the Virginia Parkway Widening (East Section) project to receive $2,480,000 in RTR funding for design and ROW acquisition.

- In October 2013, Council authorized a design contract with Halff Associates (Halff) to widen Virginia from Bellegrove Drive to US 75, referred to as the east section.

- In August 2014, Council authorized a supplemental agreement with Halff to design the widening of the west section from Ridge Road to Bellegrove Drive and to incorporate the improvements into one set of construction drawings.

- By combining the two sections into a single project, construction activities can be phased in a manner that will minimize traffic impacts for the corridor. Communication and coordination between the City, engineer, contractor and stakeholders will be improved, and project management streamlined, effectively saving time and money on the project.

- In September 2014, the Engineering Department hosted an open-house style public information meeting where exhibits of the proposed widening project were displayed for public viewing and input.

- Over 50 people attended the meeting and 16 public comment cards were received. Ten (10) of the 16 comment cards noted opposition to the project, four (4) noted support of the project, and two (2) were neutral.

- There was a distinct and vocal presence from the Mallard Lakes subdivision at the meeting, and many concerns and questions were raised about the need for this project.

- A subsequent meeting was requested by the Mallard Lakes HOA, at which Mayor Loughmiller, Mayor Pro-tem Ussery, and Engineering Staff responded to further questions regarding the need for the project. Some of the comments/questions from residents included:
  - Widening the road will increase traffic.
  - Reducing the median width will make the intersection unsafe, particularly for inexperienced drivers.
  - Trees will be removed, making McKinney a “concrete jungle”.
  - The US 75 construction is the reason for increased traffic on Virginia. Wait until US 75 is complete, then re-evaluate traffic counts.
  - Why widen Virginia and not Eldorado?
  - Will the speed limit increase to 45 mph?

  Ultimately, the residents requested that the City reconsider widening the road adjacent to Mallard Lakes.

- Engineering Staff received additional comments after the original public meeting regarding existing safety concerns for the intersection of Virginia and Joplin. The concerns included:
  - Minshew Elementary School backup onto Virginia
  - Limited sight distance for westbound left turns to Joplin
  - Congestion in the median due to high volume of U-turns and left turns
  - Requests were made for a traffic signal

  Staff will evaluate these concerns and consider available options to improve safety at this intersection as part of the overall widening project.

- In October 2014, the County Commissioners Court selected the Virginia Parkway Widening (East Section) project to receive $4 million in County Discretionary funds.

FINANCIAL SUMMARY: N/A

BOARD OR COMMISSION RECOMMENDATION: N/A

Virginia Parkway Widening

From US 75 to Ridge Road
Project Update

November 2, 2015

- MONEY MAGAZINE 2014 -

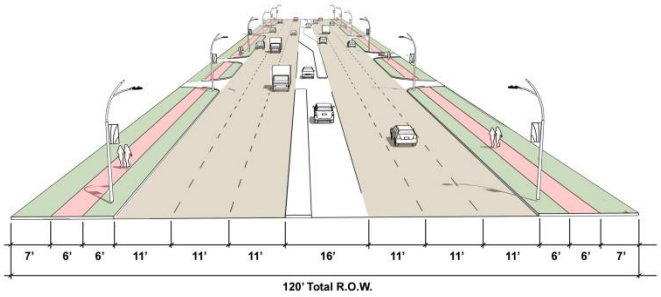
Overview

- Project Description
- Project Development Timeline
- Proposed Improvements
- Construction Phasing
- Budget Summary
- Questions / Comments

Project Description

Virginia Parkway Lanes 5 & 6

Ridge Road to US 75 (ST1219/ST1231)

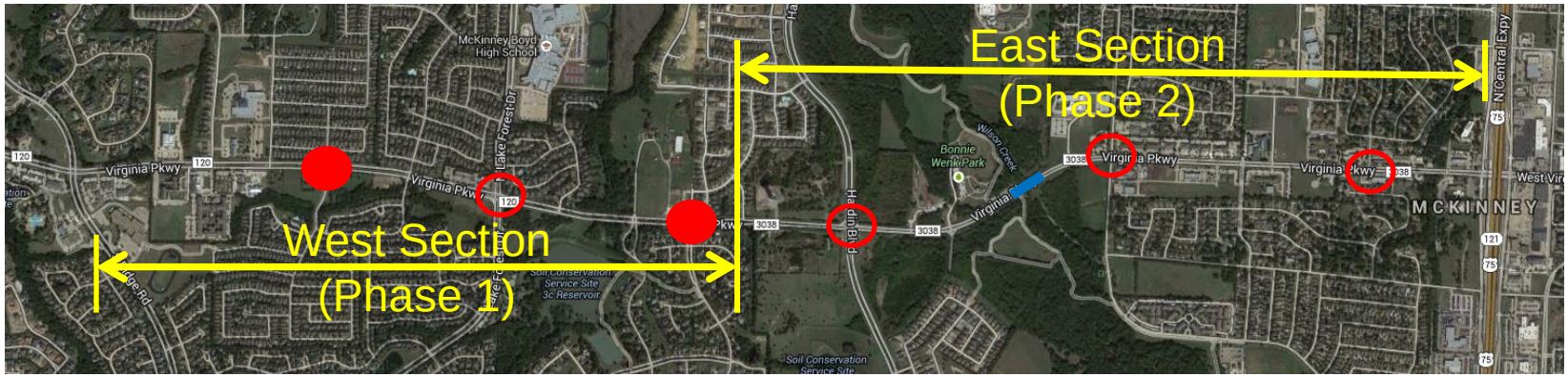


Widen Virginia to 6-Lanes with related improvements to the bridge over Wilson Creek, water, sewer, drainage, lighting, traffic signals and sidewalks.

Construction Cost: $12 million (est.)

Milestone Dates

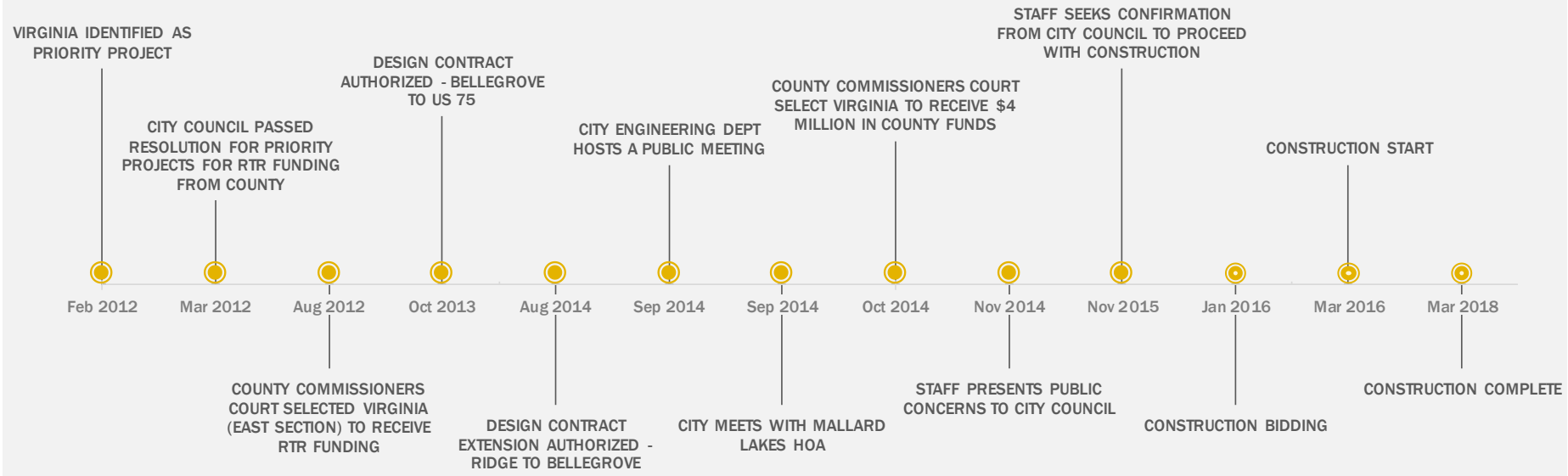
- Design Start: October 2013
- Construction Start: Spring 2016
- Construction End: Summer 2018



New Traffic Signal Traffic Signal Modifications Bridge Widening

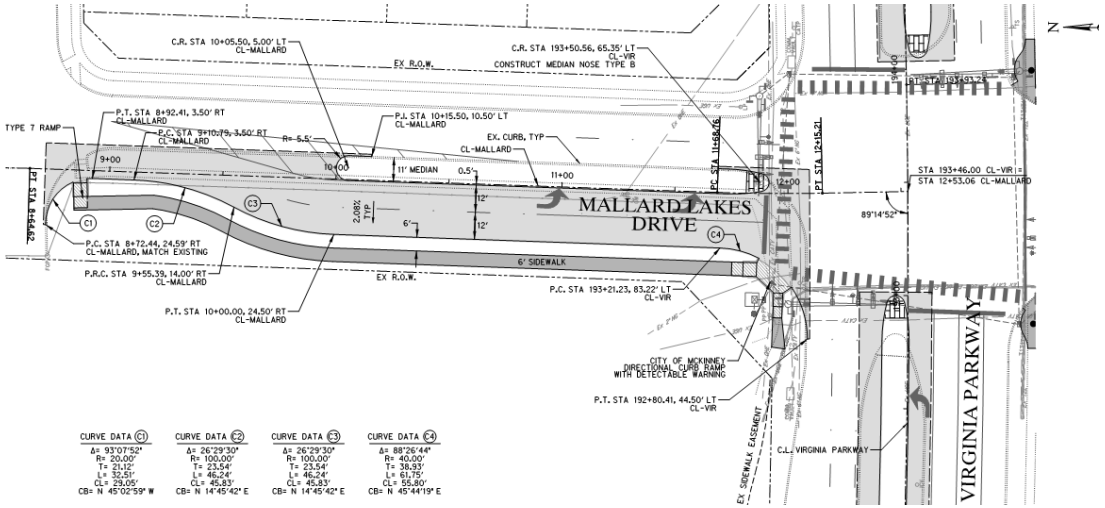
Project Development Timeline

Virginia Parkway Lane 5 & 6



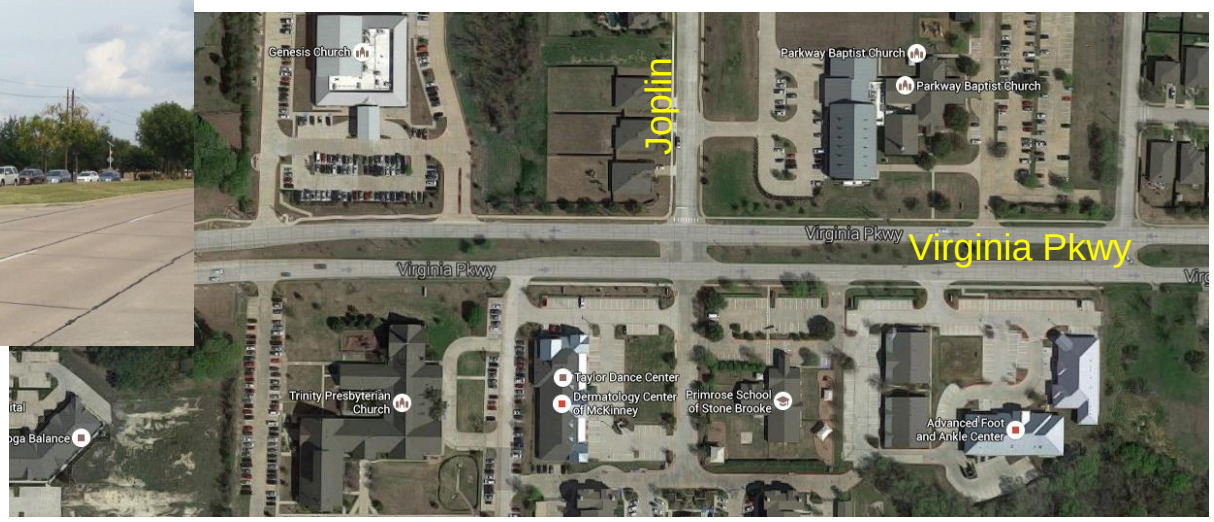
Proposed Improvements

- **Mallard Lakes Drive**
  - Concerns:
    - Limited visibility due to existing geometry
    - Blocked medians due to offset lanes
  - Proposed Improvements:
    - Install a traffic signal
    - Construct the 2-lane approach for southbound Mallard Lakes at the intersection



Proposed Improvements

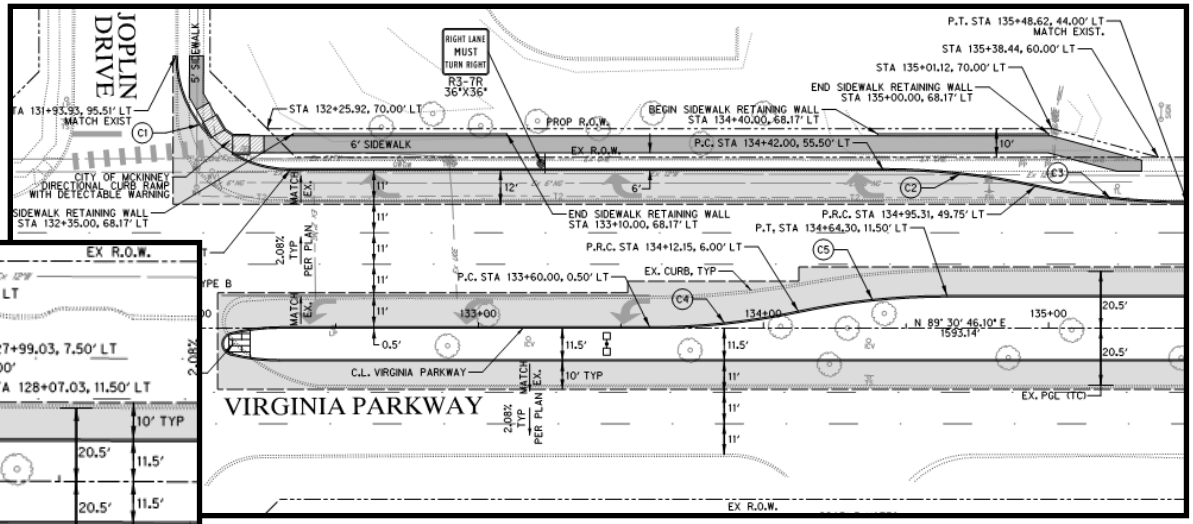
- **Joplin Drive**
  - Concerns:
    - Minshew Elementary School backup onto Virginia
    - Limited visibility for westbound left turn to Joplin
    - Congestion in the median due to high volume of U-turns and left turns



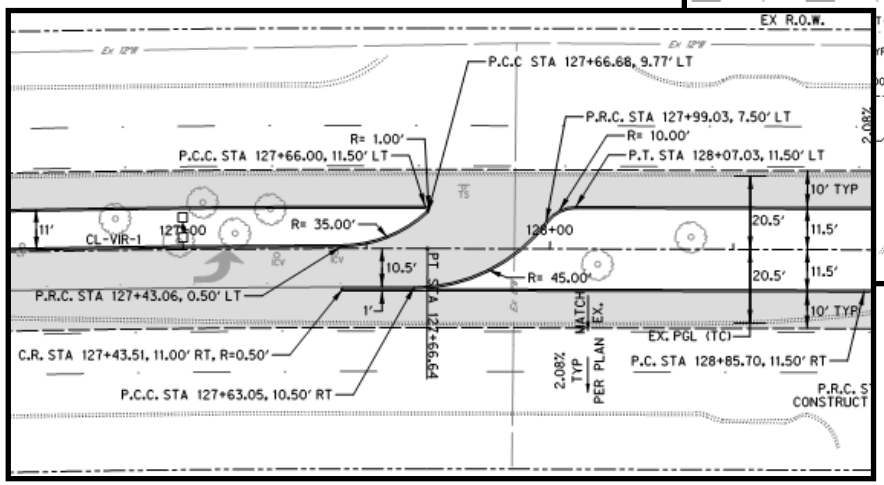
Proposed Improvements

- **Joplin Drive**
  - Proposed Improvements:
    - Westbound right turn lane at Joplin
    - Left turn / U-turn west of the Joplin intersection

Westbound Right Turn Lane



New Left turn / U-turn



Proposed Improvements

- **Summary of Construction Cost**
  - Mallard Lakes Traffic Signal $300,000
  - Mallard Lakes Drive Pavement $60,000
  - Joplin Right Turn Lane (with sidewalk) $40,000
  - U-turn Median Opening $25,000

Budget Summary

	EAST SECTION	WEST SECTION	TOTAL
Estimated Project Cost (Design/ROW/Utilites/Const)	12,200,000	3,307,300	15,507,300
Funding Source			
City	4,658,674	2,270,000	6,928,674
RTR	2,480,000		2,480,000
Collin County	5,300,000	878,876	6,178,876
	12,438,674	3,148,876	15,587,550

Construction Phasing Summary

- **West Section – Ridge to Bellegrove (8 months)**
  - Joplin Right Turn Lane
  - Lake Forest Intersection
  - Median Widening (both directions)
  - Traffic Signals and Street Lighting
- **East Section – Bellegrove to US 75 (18 months)**
  - Bridge Widening at Wilson Creek (minimal impact to traffic)
  - Traffic Signal Adjustments and Median Street Lighting
  - Water Line Replacement
  - Eastbound
    - Storm sewer installation
    - Pavement Widening and Driveway Construction
    - Signing and Pavement Markings
  - Westbound
    - Storm sewer installation
    - Pavement Widening and Driveway Construction
    - Signing and Pavement Markings

Questions?

15-1126

TITLE: Present/Discuss Housing and Community Development Policies, Programs and Goals for FY16

COUNCIL GOAL: Operational Excellence

MEETING DATE: November 16, 2015

DEPARTMENT: Housing and Community Development

CONTACT: Janay Tieken, Director of Housing and Community Development
Shirletta Best, Community Services Administrator
Cristel Todd, Affordable Housing Administrator

RECOMMENDED CITY COUNCIL ACTION:

- This is an item for discussion only and no City Council action is required.

ITEM SUMMARY:

- Annual update of Housing and Community Development Policies, Programs and Goals.
    - Affordable Housing
        - Rehabilitation/Reconstruction Program
        - First Time Homebuyer Program
        - Tenant-Based Rental Assistance (TBRA)
        - Lot Disposition
        - Affordable Multifamily
        - Redevelopment Funding Tools
        - McKinney Housing Finance Corporation (MHFC)
        - Policies and Procedures
    - Community Services
        - Community Development Block Grant (CDBG)
        - Community Support Grant (CSG)
        - Economic Development
        - Policies and Procedures

- McKinney Arts Commission
    - Public Art Mural
    - Rotating Exhibit of Art through MAAA
    - Community Arts Center
- Centralized Management of City of McKinney Grants

BACKGROUND INFORMATION:

- The Department of Housing and Community Development oversees the financial and project and compliance of grant funded City of McKinney programs

- The Department has direct oversight for Community Development and Affordable Housing initiatives

- Department staff serve as liaisons to the McKinney Housing Finance Corporation (MHFC), McKinney Arts Commission (MAC) and Community Grants Advisory Commission (CGAC)

BOARD OR COMMISSION RECOMMENDATION: N/A

SUPPORTING MATERIALS:

CDBG Subrecipient Manual
Conflict of Interest Policy
Affordable Housing Policies and Procedures Draft
Housing Program Projects as of June 2015
Presentation

CDBG Sub-Recipient Compliance Manual

Table of Contents

1. Introduction

Since 2002, the City of McKinney has enjoyed the privilege of serving the community with Housing and Community Development Resources under the Community Development Block Grant (CDBG). McKinney receives the Community Development Block Grant (CDBG) directly from the U.S. Department of Housing and Urban Development (HUD. The federal agency award this funding allocation to municipalities of a certain size (generally 50,000 and more in population), and the amount of the funding received is based on a number of characteristics, including population, housing affordability, poverty and income levels.

It is required that that housing and community development grant funds primarily benefit low- and moderate-income persons in accordance with the following HUD performance measurement objectives:

1. Establishing and maintaining a suitable living environment,

2. Providing decent housing, and

3. Providing expanded economic opportunities.

Based on the socioeconomics and housing market characteristics, the City of McKinney has developed the following goals to guide spending during the current Housing and Community Development Consolidated Plan. Each year agencies and city funding projects must develop an Annual Action Plan for public comment, adoption and approval by HUD before the beginning of each program year under the Consolidated Plan. Every five years, the City begins a new community wide citizen participation process to develop the next plan

The final program year ending in September 30, 2014 for the current plan falls under the following strategies.

Strategy 1.
Improve the condition of housing occupied by the city's lowest income homeowners and preserve affordable housing stock.

Strategy 2.
Support organizations that assist the city's special needs populations.

Strategy 3.
Provide supportive services for residents who encounter homelessness or have a need of homeless prevention services.

Strategy 4.
Increase homeownership opportunities for low- and moderate-income households.

Strategy 5:
Expanding economic development opportunities.

1.1 Purpose

The Purpose of this manual is to provide management support to CDBG sub-recipients, while ensuring that they adhere to federal and City of McKinney grant rules. It is designed to help agencies understand the requirements that apply to the use of federal funds for the delivery of CDBG programs and activities. It is a supplemental reference guide to applicable regulations, standards, and policies. The basic program regulations governing management and financial systems for CDBG programs are contained in the Code of Federal Regulations Title 24 (24 CFR), and the various OMB Circulars referenced in this manual.

1.2 CDBG Program

The Community Development Block Grant (CDBG) program is a flexible program that provides communities with resources to address a wide range of unique community development needs. Beginning in 1974, the CDBG program is one of the longest continuously run programs at HUD.
The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States. (www.hud.gov/cdbg)

The CDBG program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses. CDBG is an important tool for helping local governments tackle serious challenges facing their communities. The CDBG program has made a difference in the lives of millions of people and their communities across the Nation. (www.hud.gov/cdbg)

1.2.1 National Objectives

All activities funded under CDBG **MUST** meet the test of delivery under at least one National CDBG Objective.

Objective 1:

- Funded activities must primarily benefit low and moderate income persons. (LMIP)

At minimum **51%** of clients served must benefit low and moderate income. Low and moderate income is defined by the Dallas Metropolitan Statistical Area guidelines established by HUD, and revised annually. Each agency/organization receiving CDBG funds will be required to **obtain written proof of income for each person or household assisted**, to determine their eligibility. In this instance, the City is looking for verification of a minimum of 51 percent of the beneficiaries who are receiving direct benefit are low-income. Income certification forms are required in each file with supporting documentation.

Collin County, TX Income Limits: If a client has a household size of three, with a household income of $18,255 the family would be listed as extremely low income, 30% income range.

PY 2014 - 2015 INCOME LIMITS								
	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% Extremely Low	$14,250	$16,300	$18,350	$20,350	$22,000	$23,650	$25,250	$26,900
50% Very Low	$23,800	$27,200	$30,600	$33,950	$36,700	$39,400	$42,100	$44,850
80% Low/Moderate	$38,050	$43,450	$48,900	$54,300	$58,650	$63,000	$67,350	$71,700

Limited Clientele Income Under Presumed Benefit. HUD allows a ***"Presumed Benefit"*** definition as certain groups are presumed by HUD to be principally low-income. These groups include: abused children, battered spouses, elderly persons (**62 and older**), severely handicapped adults, homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers. In this instance, proof of income is not required in the file, but other sources are.

GROUP	INCOME LEVEL (Area Median Income)
Abused Children	Extremely Low Income (30% AMI)
Battered Spouses	Low Income (50% AMI)
Severely Disabled Adults	Low Income (50% AMI)
Homeless Persons	Extremely Low Income (30% AMI)
Illiterate Adults	Low Income (50% AMI)
Persons with AIDS	Low Income (50% AMI)
Migrant Farm Workers	Low Income (50% AMI)
Elderly	If assistance is to acquire, construct, convert, and/or rehabilitate a Senior Center or to pay for providing center-based Senior services, report the beneficiaries as Moderate Income (80% AMI) If assistance is for other services (not center-based), report the beneficiaries as Low Income (50% AMI)

Objective 2:

- Activities must aid in the prevention or elimination of slums or blight, either on an area basis or on a spot basis.

The slum or blighted area must be so designated by the City.

Objective 3:

- Address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

1.2.2 Eligible Activities

The following activities listed below may be funded by the Community Development Block Grant (CDBG). **Eligible activities must meet at least one National Objective.**

1. Acquisition of real property in whole or in part by public or private nonprofit agencies by purchase, long-term (15+ years) lease, or otherwise. A minimum five-year forgivable lien for the amount of the purchase is required. Acquisition which would result in the relocation of an existing business or resident will NOT normally be funded.

2. Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds, with the proceeds from such disposition to be returned to the City of McKinney.

3. Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements, including homeless shelters, convalescent homes, hospitals, nursing homes, battered spouse shelters, halfway houses, and group homes for mentally retarded persons. These projects are subject to the enforcement of the labor standards provisions of the *Davis-Bacon Act, the Copeland Act, and the Contract Work Hours and Safety Standards Act.*

   3a. Construction projects will be required to comply with these provisions, which include the payment of applicable federal wage rate with benefits; compliance with overtime pay requirements, and contractor and subcontractor eligibility requirements. On the projects in which contractors and subcontractors that are on the federal debarred list are ineligible to participate. Lead Based Paint regulations and state regulations will also be subjects to compliance. In addition, projects will also be subject to the bidding and procurement requirements of 24 CFR Part 85.

4. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites.

5. Provision of public services *(including labor, supplies, and materials)* which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare, or recreational needs.

   In order to be eligible, a public service must be either a new service, or a quantifiable increase in the level of a service above that which has been funded by the City of McKinney during the previous 12 months. Emergency Financial/Subsistence Assistance cannot exceed three (3) months per person/household. The total amount of CDBG funds used for public services may not exceed 15 percent of the city's total CDBG grant by statutory law.

6. Removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.

7. Rehabilitation of privately and publicly owned buildings and improvements for residential purposes. If the rehabilitation will disturb or paint over existing paint, costly lead-paint abatement may be required.

8. Rehabilitation of publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations.

9. Improvements to buildings to increase energy efficiency.

10. Rehabilitation, preservation, or restoration of historic properties.

11. Provision of credit, technical assistance, and general support *(including peer support programs, counseling, child care, transportation, etc.)* for the establishment, stabilization, and expansion of micro enterprises. A micro enterprise is a business with five or fewer employees, one or more of whom owns the business.

12. Provision of assistance to a private for-profit business where appropriate to carry out an economic development project. Any project funded must be able to document the creation or retention of a certain number of jobs, depending on the type of project proposed and the amount of funding requested.

13. Removal of lead-based paint from residential structures.

14. The costs of audits made in accordance with the provisions of OMB Circular A-133 are allowable charges to the Community Development Block Grant (CDBG) program. You may charge a proportionate share of the cost of your single audit to your CDBG administrative budget. The allowable percentage of your audit costs cannot exceed the percentage of your local budget represented by the audited CDBG funds.

Note: This list is not comprehensive; agencies may always consult with staff for questions at the start of an application process, change of fund use if applicable, etc.

1.2.3 Ineligible Activities

The following activities **MAY NOT** be assisted with CDBG funds:

1. The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible.

2. The construction of new permanent residential structures is not eligible, unless done by a HUD-qualified non-profit organization. Purchase of land on which to build affordable homes, however, is an eligible activity.

3. CDBG funds may not be used for political purposes or to engage in partisan political activities, or for lobbying of local, state, and federal legislators.

4. Long term subsistence payments *(longer than three months)* for such needs as rent and utilities are ineligible.

5. Landscaping and tree trimming are not eligible expenses.

6. Mortgage payments for agency properties are not eligible, although rent payments may be eligible if the building is one in which services are provided directly to clients.

7. Administrative costs which do not provide direct services to clients.
Example: The salary of an administrative assistant who does not work directly with clients would be an ineligible cost. The rent for administrative office space would NOT be an eligible expense, unless services provided are directly from that office space.

1.2.4 Allowable Costs

For additional information on Allowable and Unallowable Costs under the Community Development Block Grant, please view the following online resources:

Resources for OMB A-133 Audits

OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations (includes revisions published in the *Federal Register* 06/27/2003 and 06/26/2007) (34 pages, 173 kb)

OMB Circular A-122, Cost Principles for Non-Profit Organizations (05/10/2004) HTML or PDF (55 pages, 220 kb), Relocated to 2 CFR, Part 230 (17 pages, 235 kb)

1.3 Consolidated Plan

The purpose of the Consolidated Plan is: 1. To identify a city's or state's housing and community development needs (including neighborhood and economic development), priorities, goals and strategies; and 2. To stipulate how federal funds will be allocated to housing and community development activities.

In addition to the Consolidated Plan, HUD requires that cities and states receiving CDBG funding take actions to affirmatively further fair housing choice. Cities and states report on such activities by completing an Analysis of Impediments to Fair Housing Choice (AI) every three to five years. Ingeneral, the AI is a review of impediments to fair housing choice in the public and private sector. The city will begin its update of the next plan from September 2014 through August 2015.

The most recent Consolidated Plan is available online at:
http://www.mckinneytexas.org/DocumentCenter/View/192

1.4 Faith Based Organizations

Executive Order 13279 requires all federal programs, including CDBG, to treat all organizations fairly and without regard to religion. The following rules apply to these organizations:

1. Faith-based organizations retain their independence over their governance and expression of their beliefs. They may constitute their boards on a religious basis, display religious symbols and icons, and retain their civil right to hire only employees that share their beliefs, to the extent consistent with governing HUD program statutes. However, faith-based

organizations may not discriminate in hiring people who will be delivering services which are supported by HUD funding.

2. Direct HUD funds may not be used to support inherently religious activities such as worship, religious instruction, or proselytization. A faith-based organization may still engage in such activities so long as they are voluntary for program participants and occur separately in time or location from the activities directly funded under a HUD program.

3. Faith-based organizations, like all organizations under HUD-funded programs, must serve all eligible beneficiaries without regard to religion. For example, an organization receiving HUD funds may not restrict HUD-funded services to people of a particular religion or religious denomination.

4. Faith-based organizations may receive HUD funds to acquire, rehabilitate, or repair buildings or other real property, so long as the funds only pay the percentage of the total cost attributable to HUD activities. However, HUD funds may not be used to acquire or improve sanctuaries, chapels, and other rooms that a HUD-funded congregation uses as its principal place of worship.

1.5 ADA Compliance

The Sub-Recipient agrees to comply fully with and all provisions of the Americans with Disabilities Act (hereinafter referred to as 'ADA') as applicable to the Sub-Recipient and the activities to be performed by the Sub-Recipient under the scope of the contract agreement. If employing more than fifteen (15) employees, the Sub-Recipient agrees to fully comply with Title I of the 'ADA' as set forth at 28 CFR Part 130. If providing 'public accommodations' as defined by the Act in Section 301(7)(A)-(L), the Sub-Recipient agrees to comply fully with Title III of the 'ADA' as set forth at 28 CFR Part 36. If providing public transportation, the Sub-Recipient agrees to comply fully with the Federal regulations set forth at 49 CFR Parts 37 and 38.

In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, the City of McKinney will not discriminate against qualified individuals with disabilities on the basis of disability in the City's services, programs, or activities.

1.6 Limited English Proficiency

On August 11, 2000, the President signed Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency". The Executive Order requires Federal agencies to examine the services they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. It is expected that agency plans will provide for such meaningful access consistent with, and without unduly burdening, the fundamental mission of the agency. The Executive Order also requires that the Federal agencies work to ensure that recipients of Federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.

To assist Federal agencies in carrying out these responsibilities, the U.S. Department of Justice has issued a Policy Guidance Document, "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency". This LEP Guidance sets forth the compliance standards that recipients of Federal financial assistance must follow to ensure that their programs and activities normally provided in English are accessible to

LEP persons and thus do not discriminate on the basis of national origin in violation of Title VI's prohibition against national origin discrimination. (http://www.lep.gov/13166/eo13166.html)

1.7 Conflict of Interest

Although an agency may be reviewed an cleared for funding, the organization must be aware and carefully consider whether any activity may give rise to an improper conflict of interest situation. Conflict of interest situations that are not properly addressed can result in a loss of CDBG funding to the program and/or to the City, and in some cases can result in civil or criminal liability. Organizations that are requesting CDBG funding should ask themselves the following questions:

1) Are any of my employees or board members…

- A City employee or consultant who exercises CDBG-related functions as part of their City position?
- A member of the Community Grants Advisory Commission that will participate in the City's CDBG selection process?
- A City Council member?

2) Are any immediate family members or business associates of my employees or board members…

- A City employee or consultant who exercises CDBG-related functions as part of their City position?
- A member of the Community Grants Advisory Commission that will participate in the City's CDBG selection process?
- A City Council member?

3) Do I know if any of my employees or board members receive a financial interest or benefit from CDBG funds (other than employee salaries or personnel benefits)?

4) Will any immediate family members or business associates of my employees or board members receive a financial interest or benefit from CDBG funds (other than employee salaries or personnel benefits)?

5) To my knowledge, will my agency's program or project have a financial effect on a City official or employee who exercises CDBG-related functions, or an immediate family member or business associate of such person? For example, will any of these persons be receiving rental payments, other business income, or program services from the agency's program?

6) Or, for example, do any of these persons own real property near the program or project site, and is it likely that my program or project will have an effect on any neighboring real property values?

If you can answer "yes" to any of these questions, it is possible that there may be a conflict of interest, real or apparent. You should review the rules below to determine whether an actual conflict situation is raised, and, if so, what action needs to be taken to avoid a violation of the law. You should contact the CDBG Administrator immediately if you suspect that there might be an issue or need additional information of compliance in concert with 24 CFR 570.611 HUD regulations OMB Circular No A-102, and in the City Policy on Code of Ethics within the grant agreement.
(http://www.gpo.gov/fdsys/pkg/CFR-2010-title24-vol3/pdf/CFR-2010-title24-vol3-sec570-611.pdf)

Each CDBG Sub-recipient or Contractor will be required in its grant contract with the City to warrant and represent, to the best of its knowledge at the time the contract is executed, that they are not aware of any improper conflict of interest circumstances as described. Also, the contract will obligate funded agencies or organizations to exercise due diligence to ensure that no improper conflict situations occur during the contract.

2. Financial Management

24 CFR Part 84.21-28 as amended by 570.502, for non-profit agencies, 24 CFR Part 85.20 for governmental sub-recipients, and 24 CFR 92.508 state the financial management and reporting systems for CDBG grant recipients. These requirements have been established to make sure that sub-recipient have a financial management system that : 1) provides effective control over the accountability of all funds, property, and other assets. 2) ensures 'reasonableness, allowability, and allocability' of costs and verity that expenses have not violated any federal restrictions or prohibition, 3) permit the accurate, complete, and timely disclosure of financial results in accordance with reporting requirements of the grantee (City of McKinney) or HUD, and 4) minimize the time lapse between transfer of funds from the U.S. Treasury and disbursement to the sub-recipient.

2.1 Internal Controls

Funded CDBG subecipients must have solid internal controls to include a combination of procedures, specified job responsibilities, qualified personnel, and records that together create accountability in an organizations financial system and safeguards it's cash, property, and other assets. Such control ensure that 1) resources are used for authorized purposes and in a manner consistent with the applicable laws, regulations, policies, and contractual requirements, 2) resources are protected against misuse, waste, or loss, and 3) reliable information on source, amount, and use of resources are current and recorded. Additionally, internal controls will ensure that no one individual has authority of an entire financial transaction.

Specifically, that your organization has a separation of power for the following three responsibilities:

1) authorization to execute a transaction, 2) recording the transaction, and 3) custody of assets involved in the transaction. This type of separation of responsibilities will create a system of checks and balances for grant and general organization procedures.

Finally, it is important that your organization regularly reconciles your financial records to actual assets and liabilities. Such actions will safeguard resources as well as detect any instances of fraud or misuse.

2.2 Accounting

Sub-recipients must have accounting records that adequately identify the sources and application of CDBG funds. Simply stated, your organization should have 1) a chart of accounts which includes general assets, liabilities, expenses, and revenue, 2) a cash receipts and disbursement journal, 3) a payroll journal, and 4) a general ledger. Overall, the sub-recipient should comply with all Generally Accepted Accounting Principles as defined by the Texas Government Code.

2.3 Financial Reporting

Financial reporting prepared by the sub-recipient must be accurate, timely, current, and represent complete disclosure of the financial activity and status of CDBG grants. A sub-recipient must have the capacity to provide the following:

1. Amount budgeted
2. Reimbursements received to date
3. Program income and other miscellaneous receipts in the current grant period, and year-to-date.
4. Actual expenditure and reimbursements in the current grant period and year-to-date for both program income and regular CDBG grant funds.

2.4 Audit Requirements

All CDBG funded agencies must have an audit and provide a copy to the city per grant agreement requirements. If the total amount of Federal funds received by your Agency from all sources ***exceeds*** $500,000 during the fiscal year ending on September 30, you must prepare a Single Audit in compliance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" EVERY year. If the total amount of Federal funds received by your agency from all sources is ***less than*** $500,000 during the fiscal year ending September 30, you must prepare Single Audit in compliance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" EVERY TWO YEARS.

A charitable organization with annual contributions over $10,000 must have current and accurate financial records in accordance with GAAP. Based on these records, the board should prepare or approve a financial report that conforms to AICPA standards. The financial report must be made available to the public (§ 22.353(b)). Exemptions (§ 22.355) (Tex. Bus. & Org. Code § 22.352) You must submit one (1) copy of your most recent Single Audit to the City with your application.

The Single Audit Report must state that the audit was made in accordance with the provisions of OMB Circular A-133, and should include the following:

1. Any separate management letter.
2. The auditor's report on the financial statements of the agency, and a set of the financial statements themselves.
3. The auditor's report on Schedule of Federal Assistance. The federal expenditures must be shown for each federal assistance program.
4. The auditor's report on the study and evaluation of internal controls systems. The report should identify significant internal accounting controls and any controls designed to provide reasonable assurance that federal programs are being managed in accordance with laws and regulations. Likewise, the report should identify the controls not evaluated and the material weaknesses identified as a result of the evaluations.
5. The auditor's report on compliance with the laws and regulations that may have material effect on each major federal program.
6. The auditor's report on compliance with certain requirements of non-major programs (if required).
7. The auditor's report on fraud, mismanagement, abuse, or illegal acts (if any).

2.5 Program Income

Program Income (24 CFR 570.503(a), (b)(3) and (7), and 570.504)
The term **"program income"** means any gross income received by the sub-recipient that was directly generated from the use of CDBG funds (24 CFR 570.500(a)). For those program-income generating activities that are only partially assisted with CDBG funds, such income is prorated to reflect the actual percentage of CDBG funds that were used. This includes, but is not limited to:

- Proceeds from the sale or long-term lease (15 years or more) of real property purchased or improved with CDBG funds.
- Proceeds from the disposition of equipment purchased with CDBG funds.
- Gross income from the use or rental of property acquired by the grantee or Sub-recipient with CDBG funds, less the costs incidental to the generation of such income.
- Gross income from the use or rental of real property owned by the grantee or Sub-recipient that was constructed or improved with CDBG funds that is owned (in whole or in part), less any costs incidental to the generation of such income.
- Payments of principal and interest on loans made using CDBG funds.
- Proceeds from the sale of loans made with CDBG funds.
- Proceeds from the sale of obligations secured by loans made with CDBG funds.
- Interest earned on program income, pending the disposition of such program income.
- Interest earned on funds held in a revolving fund account.
- Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where such assessments are used to recover part or all of the CDBG portion of a public improvement.

Program Income **DOES NOT** Include:

- Income earned on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury, and will not be reallocated under section 106(c) or (d) of the Act:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Interest earned on loans or other forms of assistance provided with CDBG funds that are used for activities determined by HUD either to be ineligible or to fail to meet a national objective in accordance with the requirements of subpart C of this part, or that fail substantially to meet any other requirement of this part; and

(iii) Interest earned on the investment of amounts reimbursed to the CDBG program account prior to the use of the reimbursed funds for eligible purposes.

- Any income received in a single program year by the recipient and all its sub-recipients if the total amount of such income does not exceed $25,000.
- Proceeds from fund raising activities carried out by sub-recipients receiving CDBG assistance (the costs of fundraising are generally unallowable under the applicable OMB. circulars referenced in 24 CFR 84.27).
- Funds collected through special assessments used to recover the non-CDBG portion of a public improvement.

▪Proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified (5 years or more if so determined by the grantee) after the expiration of the agreement between the grantee and sub-recipient for that specific agreement where the CDBG funds were provided for the acquisition or improvement of the subject property.((570.503(b)(8))

The publication of the CDBG Final Rule in September, 1988 contained a requirement at 570.503 that grantees must sign a written agreement with sub-recipients before disbursing any CDBG funds. The written agreement must include several items, one of them concerning program income. Specifically, the agreement must specify whether any program income received by the sub-recipient is to be retained by the sub-recipient or returned to the grantee. If the sub-recipient is permitted to keep program income, the agreement must specify how it will be used. The provisions of the written agreement apply to such activities carried out with the program income. Further, the program income must be substantially disbursed before the grantee provides additional CDBG funds to the sub-recipient. Program income on hand at the time of expiration of the agreement must be returned to the grantee along with accounts receivable that are attributable to the use of CDBG funds.

If the sub-recipient owns property that was acquired or improved with CDBG funds in excess of $25,000, and subsequently disposes of the property, the sub-recipient is required to reimburse the grantee in an amount that is equal to the current fair market value of the property (minus any value attributable to non-CDBG funds that were involved in the acquisition or improvement, if applicable). The sub-recipient, however, is only required to reimburse the grantee if the property disposition takes place during the five year period following the expiration of the agreement.

3. Insurance and Indemnification

Each funded activity may have variation of insurance requirements per the City's Risk Management Department, which will be detailed per the subrecipient's grant agreement. In general, the Agency shall procure and maintain insurance for the duration of the Grant Agreement. Insurance against claims for injuries to persons or damages to property which may arise from or in connection with the services performed or to be performed hereunder by the Agency, its agents, representatives, employees, volunteers, officers, directors, or subcontractors.

The Agency shall maintain insurance with limits not less than $500,000 per occurrence, $1,000,000 aggregate and will be as broad as ISO Form Number GL 0002 (Ed 1/72) covering Comprehensive General Liability and ISO Form Number GL 0404 covering Broad Form Comprehensive General Liability, or ISO Commercial General Liability coverage ("occurrence") form CG 0001). Coverage will include:

a. Premises - Operations;
b. Broad Form Contractual Liability;
c. Broad Form Property Damage; and d. Personal Injury

The policy will be endorsed to contain the following provisions: **"The City of McKinney, its officers, officials, employees, volunteers, boards and commissions are to be added as 'Additional Insured's' as respects to liability arising out of any activities performed by or on behalf of the Agency."** The policy shall contain no special limitations to the scope of coverage afforded to the City. The Agency's insurance coverage shall be primary and any insurance or self-insurance shall be in excess of the Agency's insurance and shall not contribute with it. Also, agency must

provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of insurance.

Insurance Company Qualification: All insurance companies providing the required insurance shall be authorized to transact business in Texas. The City of McKinney prefers that insurance shall be placed with insurers with an A.M. Best rating of no less than A:VI or, a Standard & Poors rating of A or better.

Certificate of Insurance: The Agency shall furnish the City with a certificate of insurance which shows the coverage provided. The insurance policy will be endorsed to state the coverage shall not be suspending, voided, canceled, non-renewed, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

The Certificate Holder must read as follows:
City of McKinney
c/o EBIX BPO
212 Kent Street
Portland, MI 488-75-0257

One copy must be mailed to the above address or emailed to certsonly-portland@ebix.com and cc to sbest@mckinneytexas.org for program files. The City of McKinney will check the insurance database system for current certificates.

3.1 Insurance and Property Management

When CDBG funds are used to acquire real property (i.e. Land, buildings), federal regulations make the sub-recipient responsible for ensuring that:

1) The property continues to be used for its intended and approved purposes,
2) The sub-recipient maintains the property per the City's codes and regulations,
3) If the sub-recipient sells the property before the 5-year forgivable loan period, the City must be reimbursed the share of the property's value

4. Record Keeping and Reporting

Successful applicants will be required to sign a contract with the City which will state all the requirements to be placed on the agency, known as a Sub-recipient. In general, the following will apply to all sub-recipients:

1. Written records to justify all expenditures and client eligibility must be maintained for a period not less than five years after the full amount of the grant is expended. Records will be reviewed by the City, and may also be reviewed by HUD. Undocumented expenditures must be repaid to the City.

2. The agency is required to maintain the City's minimum liability insurance standards for the length of the contract. A copy of your current insurance ACORD form must be provided to the City as evidence of insurance before any funds can be disbursed to you.

3. The agency must administer programs in accordance with OMB Circular A-122, "Cost Principles for Non-Profit Organizations," and 24 CFR Part 84 of the Federal Regulations. In addition, if the agency receives $500,000 or more in Federal grant funds, you will be required to comply with the Single Audit Act of 1984. Any and all accountants employed by the agency should be familiar with these requirements.

4. All awarded agencies must submit quarterly and annual reports for performance measurement requirements. Reports must provide the total number of persons served, including their ethnic origin, and whether they are female heads of household. These figures are required to be reported to HUD; the Administrator will provide the deadlines at the annual contract meeting. Each agency will receive annual monitoring upon the completion of the program year.

5. Each agency is **REQUIRED** to obtain written proof of income for each person or household whom you assist, *unless clients are considered "Presumed Benefit". Income certification forms are required in each file with supporting documentation. Certification statements indicating that clientele are "Presumed Benefit" per individual file will be required if income proof is not applicable per HUD requirements.*

6. Federal Law: **The agency is required to have a written policy in place designed to ensure that the facilities are free from the illegal use, possession, or distribution of drugs or alcohol.**

7. The agency will be required to report all program income (as defined in 24 CFR 570.090(a), if any income is derived from the activities funded by CDBG under their agreement between said agency and the City of McKinney. In this event, that program income must be accounted for and returned to the City

8. In the event that HUD or the City should determine that CDBG funds were improperly spent, and the money should be reimbursed to the U. S. Treasury, the agency will be responsible for this reimbursement, not the City of McKinney.

4.1 General File Management

The Federal government requires that all sub-recipients keep records for all CDBG beneficiaries. **If the expenditures incurred with federal funds are not adequately documented, the sub-recipient will be required to refund the City of McKinney the amount of money equal to all undocumented expenditures.**

Sub-recipient Files must contain the following:

1. Application for funding submitted to the City of McKinney
2. Grant agreement;
3. Correspondence with the City of McKinney;
4. Documentation of expenditures;
5. Records demonstrating that each activity undertaken meets the National Objective of the CDBG program of benefiting low/moderate income persons; and
6. Current audit.

Beneficiary Files must contain the following:

1. File for each person or family receiving assistance;
2. Documentation of eligibility using the City of McKinney designated form
    a. CDBG Eligibility Certification Form, or
    b. CDBG Eligibility Certification Form – "No proof of income"
3. Complete documentation of assistance provided

4.2 Reporting

HUD requires the City of McKinney to report – at minimum - Quarterly and Annually regarding the use of CDBG funds. Therefore, all sub-recipients are required to submit information Quarterly and Annually outlining the progress towards the use of CDBG funds. You must report quarterly the number of clients served, including their incomes, as applicable; race/ethnicity, and status of head of household. **These must be unduplicated clients**; i.e., a client receiving service three times should only appear once on the quarterly report, and that client also should not appear again on any following quarterly report during the program year.

4.2.1 Quarterly and Annual Reports

Sub-recipients must use the current "City of McKinney CDBG Program Year Quarterly Activity Report" form as found in the 'Appendices' of this manual to report quarterly, and the "City of McKinney CDBG Program Year Annual Activity Report" form for final accomplishments. The Quarterly Activity Reports must be submitted by the deadline dates outlined below, and the Annual Activity Report must be submitted within fifteen (15) days of the end of the last quarter. The forms should be internally consistent with each other (i.e., if you indicate 12 people served on page 1, you should also indicate 12 people on page 3.)

REPORT DEADLINES

DATES	FUNDING SPENT	REPORT DUE DATES
Oct. 1st-Dec. 31st	25%	Jan. 10th
Jan. 1st-March 31st	25%	April 10th
April 1st-June 30th	25%	July 10th
75% EXPENDITURE DEADLINE–	**JULY 15TH**	
HUD TIMELINESS TEST–	**AUGUST 2nd**	
July 1st-Sept. 30th	25% (Final)	Sept. 26th

CDBG funds must be spent in a timely manner. Unless an alternative plan has been approved in writing by the Housing & Community Development Department, twenty-five percent (25%) of the award must be spent at least quarterly. To ensure compliance with this agreement, fifty percent (50%) of the CDBG grant award should be expended by March 31st of the grant year. Each funded agency or activity may vary (i.e. summer programs, etc.)

In the event that funds allocated under your agreement are not expended in the time or manner prescribed in your contract, the City of McKinney reserves the right to reprogram all or a portion of the funds at the discretion of the Housing & Community Services Administrator or his/her

designee. All funds must be expended by September 30th of the Program Year. **Unspent funds cannot be carried forward to a new Program Year and are forfeited by the Sub-Recipient.**
Agencies that complete reimbursements early within the program year will still be required to submit reports until the close of the reporting period.

4.3 Performance Measures

Performance Measurement is the collection of reporting information that allows an agency to track resources used, work produced and results achieved. Performance measures are critical in helping organizations define what success is and whether they are achieving their mission.

Tables # 1 and # 2 found in the 'Appendices', are specifically designed for your organization to provide detail about what your performance measures will be and how you will achieve success.

Remember: *What is the story that you want to tell about your program?* You will find the following headings at the top of each column in Table # 1:

Program: Identify by name the program for which you are seeking CDBG investment. Place only one program in a box.

What: Provide a brief description of the program.

How: *Describe how the program will be implemented. What kinds of services or activities are provided?* Transportation, classes, counseling, support groups, homelessness prevention services, etc. How many clients will be served? What is covered for each service? Make it applicable to your activity.

How Will You Measure Success?

These are the **outcomes** that will help you determine how successful the program will be. Identify what you are trying to accomplish with your program and tell us how you will measure it. You must have at least one measure per activity. Explain your plan for tracking participant outcomes.

Costs to Deliver Program Activity:

Indicate how much it will cost to deliver the proposed program. How much of this is CDBG and how much is from other sources? Please see **Table # 2** to arrive at the total cost to deliver the program.

Table # 2 asks that the organization indicates how it arrived at the costs for this particular program. List the cost elements, how much these elements costs, the unit of measure and its quantity, and the subtotal. Where necessary, allocate costs to the use of shared spaces, vehicles or equipment. The *"Total"* at the bottom right of the table must match the amount placed in the Summary Sheet and in the "Cost to Deliver Program" box in **Table #1.**

5. Reimbursements

CDBG funds are available to sub-recipients on a reimbursement basis only based on documentation of incurring the expense and payment of the expense. The City of McKinney will reimburse funds based upon information submitted by the sub-recipient. Any expenditures occurring after the effective date of the contractual agreement between the City of McKinney and the sub-recipient are eligible for reimbursement. Expenditures must be consistent with the approved budget as stated in the contractual agreement between the City of McKinney and the sub-recipient.

5.1 Requests for Reimbursements

Only eligible expenses will be reimbursed per the grant agreement. Payments will be adjusted by the City of McKinney in accordance with program income balances available in sub-recipient accounts, if applicable. In order to ensure accurate billing and fund management sub-recipients should keep track of the following information for activities funded:

1. Funds budgeted.
2. Funds received in City of McKinney.
3. Reimbursements to-date.
4. Funds obligated in the most recent period and to-date.
5. Funds expended in the most recent period and to-date.
6. Cash on hand (including program income identified as such), *if applicable.*
7. Previous reimbursements requested but not yet received, *if applicable*. Sub-recipients should follow City of McKinney reimbursement procedures (*see below*) to ensure timely expenditure reimbursements.

5.2 Reimbursement Procedures

You may request reimbursement that works best for your agency; however reports must be submitted quarterly. To request reimbursement, you must submit the following information:

1. A letter or invoice on your agency's letterhead with the amount of reimbursement requested, including a list of expenditures completed and are ready to be reimbursed.

2. Source documentation to support the expenditures requested for reimbursement. *(You should submit copies that may include timesheets, rosters, spreadsheets, materials, etc. as it pertains to your grant agreement.)*

3. Original signature of the Executive Director, Board President or other responsible assigned person.

Each agency will receive two tracking numbers that will consist of a purchase order number and project number; these numbers must be included on the request. This will be provided to you by staff before the end of the first reporting quarter. Both numbers must be handwritten or printed on the reimbursement form and on the letterhead request for payment. Payment requests may be delayed or returned if items are missing or incorrect.

5.2.1 Time Sheets

If your grant is intended to pay for staff salaries, time sheets must be kept and copies must be turned in with your request for reimbursement.

- **Time sheets should differentiate between hours charged to CDBG and hours charged to other sources of funding.**

- Timesheets must be maintained for salaried employees and hourly employees.

- Time spent on other activities outside the scope of the contract's project description are ineligible for reimbursement.

- **Timesheets must indicate the hourly rate of pay.**

- **Timesheets must include signatures of the supervisor and the employee.**

The City of McKinney will accept electronic timesheet detail logs, but agency must still provide differentiation of hours spent on CDBG-funded activities vs. other activities.

Please refer to the example 'Time Sheets' form located in the Appendices. It is not necessary to utilize this form, however, the information contained within is required for reimbursement requests.

6. Contract Modifications

1. Contract amendments may occur at any time, provided that such amendments make specific reference to the original contractual agreement between the City of McKinney and the sub-recipient;

and

2. Are executed in writing, signed by authorized representative of both organizations.

The City of McKinney may, in its discretion, amend contracts to conform with Federal, State, or local guidelines, policies, and available funding amounts, or for other reasons. If such amendments result in a change in the funding or the scope of services, such modifications will be incorporated only by written amendment and will not become effective until signed by both the City of McKinney and the sub-recipient.

Any request for transfer of funds among the contract budget categories submitted by the sub-recipient will require written approval from the City of McKinney, before the transfer can be effective.

7. Monitoring

Monitoring is a system designed to determine if sub-recipients are administering their CDBG program(s) in compliance with the Department of Housing and Urban Development regulations, the contractual agreement terms, and with the conditions and polices of the City of McKinney.

Authority: Title I, Housing and Community Development Act of 1974 as amended (42 U.S.C. 5300-5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). Monitoring is not an audit of the sub-recipient, but rather is focused on the "program" that is CDBG funded.

For a comprehensive review of the guidelines, please refer to the City of McKinney's CDBG Monitoring Handbook. Agencies will be monitored on an ongoing basis through regular communication, technical assistance, quarterly reports and site visits.

Risk Assessments will determine the extent of the on-site monitoring process.

8. Appeal Process

If the CDBG Application is denied funding, organizations are notified in writing. An organization may appeal such denial in writing to the City of McKinney, Housing & Community Development Department, Community Services Administrator, 314 S. Chestnut St. Suite 101, McKinney, Texas 75069. The appeal must be postmarked within 15 calendar days from the date of the City's denial notification. The appeal must set forth reasons why the applicant believes reconsideration is appropriate. Upon receipt of the appeal, the HCD staff will present and the City's Community Grant Advisory Commission will review the case to make a decision within 30 calendar days from the postmarked date of the appeal letter. The City will notify you in writing of the final decision of the appeal of the application for funding. If an appeal results in the acceptance of a CDBG application, the application is still subject to available funding and subject to the application process and federal requirements.

9. Appendices

9.1 Supporting Documentation

All accounting records must be supported by source documentation. Supporting documentation is important to keep for all CDBG expenditures. Documentation must prove that expenditures charged to the grant are

1. Incurred during the effective period of the contractual agreement between the City of McKinney and the sub-recipient,

2. Were actually paid out (or properly accrued),

3. Expenditures were allowable, and

4. Expenditures were approved by a responsible official in your organization.

In general, source documentation must explain the basis of the costs incurred. For example: With respect to staff time charged to the grant: Time sheets (signed by the employee and supervisor) explicitly stating the hours charged to the grant and attendance sheet (were used) should be available at all times for the City of McKinney to verify time charged to CDBG grants is accurate.

9.2 City of McKinney Required Forms

Please refer to the following pages for required forms. Electronic versions of the forms can be obtained through the Housing and Community Development Department. Funded agencies will receive documents electronically upon completion of the annual mandatory pre-award training.

Form A1: Conflict of Interest Questionnaire
Form A2: Determining Program Income

Form B1: Income Determination Worksheet
Form B2: CDBG Eligibility Form
Form B3: CDBG Eligibility Form-No Income
Form B4: Presumed Benefit Determination Worksheet

Form C1: Quarterly Activity Report Form
Form C2: Annual Activity Report Form
Form C3: Performance Measurement
Form C4: Performance Measurement-Delivery Cost
Form C5: Time & Attendance Sheet
Form C6: Request for Payment Form

CITY OF MCKINNEY
CDBG CONFLICT OF INTEREST QUESTIONNAIRE

Please complete, sign and date. Questionnaire MUST BE included with application.

The Agency agrees to abide by the provisions of **24 CFR 570.611** with respect to conflict of interest and covenants that it presently has no financial interest and shall not require any financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under those CDBG program regulations. The Agency further covenants that in the performance of receiving CDBG funding, no person having such a financial interest shall be employed by the Agency hereunder. These conflict of interest provisions apply to any persona who is an employee, agent, consultant, officer or elected official of the City of McKinney, or of any designated public agencies or sub-recipients, which are receiving CDBG funds.

1. Is there any member of the applicant's staff, member of the applicant's Board of Directors or officer who currently is or has been within one year of the date of this application a member of City Council or a City employee?

   ____ Yes
   ____ No
   If yes, please list name(s): _____

2. Will the funds requested by the applicant be used to pay the salaries of any of the applicant's staff or award a subcontract to any individual who is or has been one year of the date of this application a member of City Council or a City employee?

   _____Yes
   _____ No
   If yes, please list name (s):_____

3. Is there any member of the applicant's staff, member(s) of the Board of Directors, or officer(s) who are business partners or immediate family of a City Council member or a City employee?
   _____ Yes
   _____No
   If yes, please list name(s):_____

The applicant certifies to the best of his/her knowledge and belief that the data in this application is true and correct and that the filing of the application has been duly authorized by the governing body of the applicant and that the applicant will comply with all of the requirements of the grant if the application is approved.

Signature: _____

Title: _____

Date: _____

FOUR STEP PROCESS FOR DETERMINING PROGRAM INCOME

Step 1: Who is receiving funds as a result of a CDBG-assisted activity?

□ A grantee for sub-recipient is receiving funds resulting from a CDBG- assisted activity.

GO TO STEP 2

□ An entity is receiving funds resulting from a CDBG- assisted activity that involves rehabilitation, historic preservation, or renovation of it's own property per 570.202(a), (d), or (e); relocation payments per 570.201(i); or loss of rental income payments per 570.210(j).

Funds these entities receive do not constitute program income.

Step 2: Is the income directly generated from the use of GCBD funds as described in sections 570.500(a)(1)?

□ Yes

GO TO STEP 3, where the funds are from the use or rental or real property

GO TO STEP 4, for all other activities

□ No

The funds are not program income.

Step 3: Are funds remaining when the costs incidental to generation are subtracted as described in Sections 570.500(a)(1)(iii) and (iv)?

□ Yes

GO TO STEP 4

□ No

Step 4: How much gross income is attributable to the CDBG program?

□ The activity is wholly assisted with CDBG.
ALL IS ATTRIBUTABLE TO THE CDBG PROGAM

□ The activity is partially assisted with CDBG funds. (Pro-rate the gross income to reflect the percent of CDBG funds assisting the activity).
THE **PRO-RATED AMOUNT** IS ATTRIBUTABLE TO THE CDBG PROGRAM.

I hereby certify that the total program income directly generated from the use of CDBG funds is

$_____.

BY MY SIGNATURE, I ACKNOWLEDGE THAT ALL INFORMATION I HAVE PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I AM AWARE THAT MAKING A FALSE STATEMENT TO OBTAIN BENEFITS TO WHICH I AM NOT ENTITLED IS A CRIME AND MAY SUBJECT ME TO BOTH CIVIL AND CRIMINAL PENALTIES.

Signature of Agency Staff _____ Date _____

INCOME DETERMINATION WORKSHEET
(You are calculating income for the next 12 months)

Provide information on each line where applicable, either monthly amount or zero if not applicable. Provide documentation where possible. If no documentation is available, you must request a NO proof of income" form from service provider.
Client Name: _____
Date: _____

INCOME INCLUSIONS
Wages/Salary
Wage rate (hourly, salary) _____

Regular/guaranteed overtime _____

Tips, Bonuses, Commissions, Fees
or other compensation _____

Total Annual Wage/Salary _____

Net income from operation of business _____

Social Security Payments
Total GROSS for year _____

Income from Annuities, Insurance Policies,
Retirement Funds, Pensions, Disability or
Death Benefits _____

Regular Gifts or Contributions _____

Child or Alimony Support _____

Unemployment, workers comp, severance pay _____

Public Assistance payments (TANF) _____

Armed Forces Pay (except hostile duty pay) _____

Earned Income Tax Credit _____

Gambling, Prizes _____

Interest, Dividends _____

Assets over $5,000 but under $50k
Less than $5,000, use the actual income;
More than $5,000, use the greater of (1) actual income
(2)Assets X passbook rate _____

INCOME EXCLUSIONS
Full-time students in household over 18
Earnings MORE THAN $480 are excluded _____

Student scholarships _____

Lump Sum Payments (settlement, inheritances) _____

Reimbursements for Medical Expenses _____

Hostile Duty Pay _____

Payments from HUD programs for
Self Sufficiency attainment _____

TOTAL YEARLY INCOME _____
(Annual Income Limit Table listed at the bottom of actual form)

CDBG ELIGIBILITY CERTIFICATION FORM

NAME_____ **PHONE**_____ **DATE**_____

ADDRESS_____ **ZIP**_____

Head of Household: ___ Male ___ Female

Race/Ethnicity: Do you consider yourself to be Hispanic? ___ Yes ___ No
Also, please check the race/ethnicity which applies to you:

___ White	___ Asian & White
___ Black/African American	___ Black/African American & White
___ Asian	___ American Indian/Alaskan Native & White
___ American Indian/Alaskan Native	___ American Indian/Alaskan Native & Black
___ Native Hawaiian/Pacific Islander	___ Other

List Yourself and all Other Persons Occupying the Home (Relationship, Sex, Age,& Social Security Number)

1. Yourself
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

INCOME VERIFICATION DATA

The assistance you receive is determined in part by the size of your household and your income. Failure to disclose any income or assets is a criminal offense. All income and assets will require verification before eligibility will be granted. Income includes all money coming into the household from all persons over 18 years old. Self-employment wages, TANF, alimony, Social Security benefits, pensions, child support, and regular gifts of money from friends, family or a church must be disclosed. Money earned from providing services, and interest from bank accounts or investments must be disclosed.

Household Member (Source of Income & Gross Monthly Amount Received)

1. _____
2. _____
3. _____
4. _____
5. _____

I, the undersigned applicant, do hereby authorize Name of Agency to verify my personal records, including wages, pensions, and investments. It is understood that this authorization is granted for the sole purpose of certifying my eligibility for federal financial assistance, and that all information acquired in this regard will remain confidential.

BY MY SIGNATURE, I ACKNOWLEDGE THAT ALL INFORMATION I HAVE PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I AM AWARE THAT MAKING A FALSE STATEMENT TO OBTAIN BENEFITS TO WHICH I AM NOT ENTITLED IS A CRIME AND MAY SUBJECT ME TO BOTH CIVIL AND CRIMINAL PENALTIES.

_____ _____

Signature of Applicant Date

CDBG ELIGIBILITY CERTIFICATION FORM (Verification of No Income)

Form B2

NA _____ **PHONE** _____ **DATE** _____

AD _____ **ZIP** _____

Head of Household: ___ Male ___ Female

Race/Ethnicity: Do you consider yourself to be Hispanic? ___ Yes ___ No
Also, please check the race/ethnicity which applies to you:

___ White
___ Black/African American
___ Asian
___ American Indian/Alaskan Native
___ Native Hawaiian/Pacific Islander
___ Asian & White
___ Black/African American & White
___ American Indian/Alaskan Native & White
___ American Indian/Alaskan Native & Black
___ Other

List Yourself and all Other Persons Occupying the Home (Relationship, Sex, Age,& Social Security Number)

1. Yourself
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

I hereby certify that the total income of all persons living in my home is $_____. I further certify that I cannot provide written proof of income because I am unemployed, am normally paid in cash, or other reason.

BY MY SIGNATURE, I ACKNOWLEDGE THAT ALL INFORMATION I HAVE PROVIDED IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I AM AWARE THAT MAKING A FALSE STATEMENT TO OBTAIN BENEFITS TO WHICH I AM NOT ENTITLED IS A CRIME AND MAY SUBJECT ME TO BOTH CIVIL AND CRIMINAL PENALTIES.

_____ _____

Signature of Applicant Date

Form B3

PRESUMED BENEFIT DETERMINATION WORKSHEET

NAME_____ **PHONE**_____ **DATE**_____

ADDRESS_____ **ZIP**_____

Beneficiaries with **Presumed** Low/Mod Benefit:

□ *Severely disabled adults (50% AMI)

□ Illiterate adults (50% AMI)

□ Persons living with AIDS (50% AMI)

□ Battered spouses (50% AMI)

□ Abused children (30% AMI)

□ Migrant farmworkers (50% AMI)

□ Homeless Persons (30% AMI)

□ Elderly Persons (62 years & older)
- center-based elderly services (80 % AMI)
- other elderly services (50% AMI)

□ Migrant Farm Workers

**Defined as: Adults meeting the Bureau of the Census Current Population Reports definition of "severely disabled" (http://www.census.gov/prod/2012pubs/p70-131.pdf)*

_____ _____

Signature of Agency Staff Date

City of McKinney
PY 2014-15 CDBG Program Year
Quarterly Activity Report

Name of Subrecipient:	
Contact Person:	**Phone:**
Program Name:	**Email:**
Date Report Submitted:	**For Period Of** **October 1, 2014-September 30, 2015:** ☐ Oct 1 - Dec 31 ☐ Jan 1 – Mar 31 ☐ April 1 – June 30 ☐ July 1 – Sept 30

Income Limit Adjustments

The HUD income limits were recently changed. For the first quarter ONLY prior to submission of your report, please review recipient files for persons or households who qualified during the period of December 11, 2012 to January 10, 2013 and re-verify income to determine if the LMI category has changed for your reporting. (Example: A person who qualified at intake at the 50% LMI may now re-classify at 30%.)

Please provide an additional report as needed to reflect reporting under new

Reporting Income Levels

Agencies must gather income data for each client served. Income data may be in the form of paychecks/stubs or other certification of income from work or benefits, or self-certification of income level. This method is preferred over presumed categories as it gives more accurate information about beneficiaries served at various levels, especially at the poverty level.

Unless your program has documentation that would support reporting a client under another category, use the following categories to report on clients served in particular "Presumed Benefit Categories":

- Abused Children – 30% of Area Median Income (AMI);
- Battered Spouses – 50% of AMI;
- Severely disabled adults – 50% of AMI;
- Homeless – 30% of AMI;
- Illiterate Adults – 50% of AMI;
- Persons with AIDS – 50% of AMI;
- Migrant farm workers – 50% of AMI;
- Elderly (62 years of age or older):
    - Center-based senior services – 80% of AMI;
    - Other senior services – 50% of AMI.

PY 2014-15 Income Limits								
Collin County, TX	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
30% Extremely Low	$14,250	$16,300	$18,350	$20,350	$22,000	$23,650	$25,250	$26,900
50% Very Low	$23,800	$27,200	$30,600	$33,950	$36,700	$39,400	$42,100	$44,850
80% Low/Moderate	$38,050	$43,450	$48,900	$54,300	$58,650	$63,000	$67,350	$71,700

Outputs (Select one category)	Total	Year To Date
Total # of Unduplicated Persons Assisted: *For Most Public Service Activities*		
Total # of Unduplicated Households Assisted: *For Housing Activities. Lot Acquisition does not count until home is transferred in owner's name.*		
Household Income (LMI)		
Total # of Extremely Low Income Assisted (</=30% of median income)		
Total # of Very Low Income Assisted (>31% - 50% of median income)		
Total # of Low/Moderate Income Assisted (> 51% - 80% of median income)		
Total # of Non-Low to Moderate Income Assisted (>80% of median income)		
Total LMI:		
Total # of Female-Headed Households assisted:		

HOUSING ACTIVITIES ***For activities creating or assisting housing units. (Example: Habitat for Humanity, Housing Rehab Program). Must provide addresses in the narrative.***		
Total # of Housing Units assisted under Land Acquisition		
Total # of Units Occupied by Elderly		
Total # of Units Moved from Substandard to Standard (HQS or Local Code)		
Total # of Units that are Section 504 Accessible Units		
Total # of Units Qualified as Energy Star		

Total # of Units Brought Into Compliance with Lead Safety Rules (24 CFR Part 35) *For Housing Rehab Program Only.*		

Race/Ethnicity Report		Total # of Persons	Total # of Persons Year To Date	Total Hispanic Persons	Total Hispanic Persons Year To Date
ID-11	White				
ID-12	Black/African American				
ID-13	Asian or Pacific Islander				
ID-14	American Indian/Alaskan Native				
ID-15	Native Hawaiian/Other Pacific Islander				
ID-16	American Indian/Alaskan Native & White				
ID-17	Asian & White				
ID-18	Black/African American & White				
ID-19	American Indian/Alaskan Native & Black/African American				
ID-20	Other Multi-Racial				
	Total:				

Race/Ethnicity Definition:

***The term, "Hispanic" is a U.S. Census Bureau ethnicity category that can be identified with any or all races.** For example: A person can consider themselves to be Asian & White AND Hispanic. The "ID" numbers listed next to each race are HUD identifiers for reporting in the National system known as IDIS.

The total number in the Hispanic YTD category and the monthly category should be in addition to what is recorded in the race categories and not substituted for race. The Hispanic ethnicity total need not balance with any race category.

News and Accomplishments

Instructions for Narrative (NARRATIVES ARE REQUIRED IN PY 2014-15)

Please complete the narrative section on separate sheets, as needed.

- Describe all project activities that took place during this reporting period, including all outreach activities and public participation events.

- Describe how you've met objectives for achievement by the end of this reporting period.
- Describe obstacles that prevented your objectives from being accomplished. Include how those obstacles are being resolved and provide a new anticipated date of completion.
  (*Example: You planned to serve 10 persons in quarter 1, but only served 5 due as loss of program staff. New hire has been training and agency will progress to meet goal in next quarter)*

- Attach photographs, newspaper/media clippings, additional reports and other supportive information or documentation. (Optional)

- For narratives under the Housing Rehab Program:
  Provide names and addresses of housing units served.
  Provide LBP status for each housing unit assisted. (Interim Controls, Abatement, etc.) If unit is Exempt, must give reason of exemption (i.e. Emergency Repair) or Year of unit built after 1978.

Reminders:

For CDBG agencies, reimbursements and reports can be submitted separately or together. Reimbursement requests must include:
Cover Letter on Agency Letterhead
Invoice and Source Documentation per contract
CDBG Request for Payment Form
Don't forget to provide assigned Purchase Order, Project Number on the letterhead

- **Please mail activity reports and reimbursement requests to:**
  Shirletta Best, Community Services Administrator
  City of McKinney
  Housing & Community Development
  222 North Tennessee Street
  P.O. Box 517
  McKinney, TX 75070 or email: sbest@mckinneytexas.org

CITY OF MCKINNEY
2014-15 CDBG Program Year
Annual Activity Report

Subrecipient Agency:	
Contact Person:	**Phone No:**
Program Name:	**Email:**
Date of Report Submission:	**For year period of:** October 1, 2014 – September 30, 2015

Effective 12/20/2013-9/30/2014	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
0 to 30% Extremely Low	$14,250	$16,300	$18,350	$20,350	$22,000	$23,650	$25,250	$26,900
50% Very Low	$23,800	$27,200	$30,600	$33,950	$36,700	$39,400	$42,100	$44,850
80% Low/Moderate	$38,050	$43,450	$48,900	$54,300	$58,650	$63,000	$67,350	$71,700

Agency reports for entire year. Information should match all submitted quarterly reports.

Outputs	**TOTAL**
Total # of Persons assisted, OR:	
Total # of Households Assisted	
Income Limit	
Total # of Extremely Low Income (</=30% of median income) assisted:	
Total # of Very Low Income (>31% - 50% of median income) assisted:	
Total # of Low/Moderate Income (> 51% - 80% of median income) assisted	
Total # of Non-LMI (>80% of median income) assisted:	
Total # of Female-Headed Households assisted:	

Form C2

Race	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Annual Total	Total of Hispanic Origin *
White						
Black/African American						
Asian						
American Indian/Alaskan Native						
Native Hawaiian/Other Pacific Islander						
American Indian/Alaskan Native & White						
Asian & White						
Black/African American & White						
American Indian/Alaskan Native & Black/African American						
Other Multi-Racial						
TOTAL:						

Race/Ethnicity Definition:

*The term, “Hispanic” is a U.S. Census Bureau ethnicity category that can be identified with any or all races. For example: A person can consider themselves to be Asian & White AND Hispanic. The “ID” numbers listed next to each race are HUD identifiers for reporting in the National system known as IDIS.

The total number in the Hispanic YTD category and the monthly category should be in addition to what is recorded in the race categories and not substituted for race. The Hispanic ethnicity total need not balance with any race category.

HOUSING ACTIVITIES

Only for activities that are creating or assisting housing units ONLY (Lot Acquisition, Housing Rehabilitation Programs)

Total # of Housing Units assisted with Land Acquisition (Provide address and details in Narrative)		
Total # of Units Occupied by Elderly		
Total # of Units Moved from Substandard to Standard (HQS or Local Code)		
Total # of Units that are Section 504 Accessible Units		

Total # of Units Qualified as Energy Star		
Total # of Units Brought Into Compliance with Lead Safety Rules (24 CFR Part 35)		

All Funding Sources **(Leveraged Resources - Entire Project)**	**TOTAL**
CDBG - McKinney	$
Community Support Grant (if applicable)	$
Other Federal Funds	$
State/Local Funds	$
Other	$
FINAL TOTAL:	$

News and Accomplishments: Provide Your Annual Summary Stating Accomplishments and Key News During the Program Year.

2014-15 CDBG
Table # 1: Performance Measurement

(NOTE: PLEASE CREATE YOUR OWN TABLE USING THIS DOCUMENT AS A SAMPLE)

AGENCY NAME:

Program	What	How	How will you measure Success?	Cost to Deliver Program
Identify by name the program for which you are seeking CDBG investment. Place only one program in a box.	Provide a brief description of the program. Are you providing training? One-to-one counseling? Direct services? This should relate to Part I of this application.	Describe in what fashion your program will be carried out. What kinds of services or activities are provided? Transportation, classes, counseling, support groups, etc.? How many clients served? What is covered in the sessions? What is the curriculum? Etc.	These are the outcomes that will help you determine how successful the program is. Identify what you are trying to achieve with your program and tell us how you will measure it. You must have at least one measure per activity.	Indicate how much it will cost to deliver the proposed program. How much of this is CDBG and how much is from other sources? Please see **Table # 2** to arrive at the cost to deliver the program.

FY 2014-15 CDBG Activity

PERFORMANCE MEASUREMENT Table # 2: Delivery Cost

Show how costs are determined: What does it cost to put on a program and how did you arrive at that cost? Costs must relate to overall costs to deliver the program. **Use this first table to show you how to complete the table – do not include the example with your Table # 2.**

Example Program: Home Counseling Class

Cost Elements	Cost ($)	Quantity/Unit of measure	Subtotal ($)
Credit Counseling Teacher –in class	*$25*	*96 hours (8 hrs./mth x 12 months)*	*$2,400*
Homeowner Education Teacher—class prep	*$25*	*48 hours (4hrs/mth x 12 mths)*	*$1,200*
Credit Counselor—one-on-one	*$20*	*120 hours (10 hrs./mth x12 mths*	*$2,400*
Materials	*$25*	*120 course packets/credit reports*	*$3,000*
		Total	***$9,000***

Complete this Table Program:

Agency Name :

Cost Elements	Cost ($)	Quantity/Unit of measure	Subtotal ($)
		Total	

TIME AND ATTENDANCE SHEET

Employee Name _____ Job Title _____

Salary/Hourly Rate $ _____ Pay Period _____ Week Ending _____

DATE	CASE NUMBERS	WORK DESCRIPTION	CDBG HOURS	OTHER HOURS
		TOTAL HOURS		

I certify to the best of my knowledge that the hours reported herein are correct and CDBG hours worked provided services to primarily low income McKinney residents.

_____ _____

Employee Signature Date Supervisor Date

Form C5

CITY OF MCKINNEY

CDBG PY 2014-15 REQUEST FOR PAYMENT FOR PROGRAM YEAR

To: City of McKinney **Date:**

P.O # **Pay Request #:**

P.S. #

From: **Phone #:**

Original 2014-15 CDBG Award:		$ -
Less Previous Request For Payment:	-	$ -
CDBG Award Balance:		$ -
Current Request For Payment Total:		
CDBG Award Balance Remaining:		$ -

Item #	Make Payment To:	List services provided or costs incurred with documentation.	Amount
1			
2			
3			
4			
5			
TOTAL			

Please attach letter and invoice documentation to support the above request for payment

Pay request submitted by:

Administrator Review

Approved:

Grant/Project #:

Housing & Community Development Department
Conflict of Interest Policy Summary

Conflict of Interest is defined as “a real or seeming incompatibility between a person’s private interests and his or her public of fiduciary duties.”

Regulatory information is found at §570.611. (See attached.)

In general, no person who is an employee, agent, consultant, officer, or an elected or appointed official of a CDBG recipient (including a grantee such as the city) or sub-recipient may have a financial interest or financially benefit from a CDBG activity.

Advisory Members
If any Community Grants Advisory Commissioner serves on a non-profit board or committee, and that agency applies for CDBG/CSG funding, the Commissioner will be asked to abstain from any discussions and funding vote for that agency. Members must follow applicable City, State and Federal requirements for Conflict of Interest.

In other words, it is inappropriate for a Commissioner to “lobby” for an applicant or attempt to influence the Commission to fund any agency in which the Commissioner has an affiliation.

Advisory members receive this information in their CGAC guidebook at the beginning of each program year term and reminded of program and city policy prior to subreceipient determinations. Training is provided to new and returning members by City Staff. The City Secretary’s Department provides Open Government Training required by the state for new members. A form is also used for disclosure under their office.

Subrecipients
Subrecipients must comply with all federal, state and local conflict of interest laws, statutes and regulations, and said laws shall comply with all parties and beneficiaries under their contract agreements, as well as to all officers, employees and agents.

Subrecipients receive this information at the time of grant application, it is explained at the annual contract meeting and it is noted in the contract.

Applicants are provided notice with the CDBG application process and training is provided to agencies annually.

Housing Services Division
During the processing period of applications, staff conducts searches which include HUD regulations (i.e. income determinations, environmental, lead-based paint, conflicts, etc.), title searches, and other various authorizations to determine eligibility. The Department’s Housing Services Grievance Policy advises how to notify the applicant/recipients of concerns or grievances.

Sec. 570.611 Conflict of interest.

(a) Applicability. (1) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 84.42, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals,
businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to Sec. 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to Sec. 570.203,
570.204, 570.455, or 570.703(i)).

(b) Conflicts prohibited. The general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part, or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to a CDBG-assisted activity, or with respect to the proceeds of the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter. For the UDAG program, the above restrictions shall apply to all activities that are a part of the UDAG project, and shall cover any such financial interest or benefit during, or at any time after, such person's tenure.

(c) Persons covered. The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.

CITY OF MCKINNEY
AFFORDABLE HOUSING POLICIES AND PROCEDURES

Purpose

This policy covers all the programs of the Housing Services Division of the Housing and Community Development Department including, but not limited to: emergency and minor repair, rehabilitation, reconstruction, new construction and down payment and closing cost assistance for income qualified person and eligible properties. Our mission is to continue to encourage and maintain community diversity by ensuring housing choice and homebuyer opportunities to meet the needs of people of different ages, incomes and/or social and economic backgrounds, and different household and family structures by:

- Providing for a process to grant incentives to builders for the development of quality, accessible, affordable housing in furtherance of the City of McKinney's goal of creating affordable housing opportunities for low-to-moderate-income families;
- Assist income eligible residents to purchase and maintain quality, accessible and affordable housing within the City of McKinney;
- Seeking funding to develop programs that insure a variety of quality, accessible, and affordable housing options exist in all areas of the City.

Authority

The policies outlined under this program were established by City Council as follows:

- Resolution # 2001-06-93 dated June 6, 2001, **Affordable Housing Implementation Plan** (amended February 21, 2006, Resolution 2006-02-037)
- Resolution # 2001-06-096, **Land Disposition Policy** (amended December 2, 2003, Resolution 2003-12-182)
- Resolution # 2001-04-046, **Land Acquisition Policy** (amended October 5, 2004, Resolution # 2004-10-125)

Scope

This document sets forth the administrative process for the implementation and monitoring of the Affordable Housing Program, which includes but are not limited to the following:

- Reviewing applications for incentives and determining conditions for approval pursuant to affordable housing development requirements.
- Executing agreements with homeowners and builders to ensure compliance with grant funding sources and Affordable Housing Policy.
- Ensuring compliance with Affordable Housing Policies and Procedures, and grant funding sources and taking appropriate action in the event of noncompliance.

- Maintaining reporting which monitors the location, type and assistance amounts provided to residents and builders to purchase, rehabilitate, maintain, and construct quality, accessible and affordable housing.

Incentives Offered to Single Family Affordable Housing Builders

Construction or rehabilitation of single family, affordable housing may be eligible for some or all of the following fee reduction/waiver incentives:

- Resolution # 2001-06-94 dated June 6, 2001: **Waiver of Building Permit Fees** (all builders), **Waiver of Landfill Entry Fees** (for profit builders), **Waiver of Dumpster Setup/Haul Off Fees** (non-profit builders), **Waiver of Engineering Inspection Fees** (non-profit builders), **Waiver Erosion Control Deposit for Affordable Subdivisions** (all builders); (amended February 21, 2006, Resolution 2006-02-037)

Fee Waiver/Reduction Application Process

1. To receive the fee waivers, the developer submits a *Fee Waiver Application/Authorization Form* for the specific incentives desired for each location. (non-profit builders will have fees waived and for-profit builders will have fees reimbursed after documentation has been submitted and approved.)

2. To obtain certification of agreement compliance the following documentation is provided to the Housing and Community Development Department at least 2 weeks prior to closing:
    a. Completed Qualified Affordable Property Transaction Form;
    b. Verification of the homebuyer's income eligibility;
    c. Copy of New Home Contract indicating final cost of home;
    d. Copy of Homebuyer's Mortgage Commitment Letter.

    For the construction of a new single family home or the rehabilitation of an existing single family home to qualify for fee waivers/reductions, the following criteria must be met:

1. The home must meet affordability requirements based on price and income-level of homebuyer(s) or renter(s)
2. Homebuyers must earn 80% or less of the area median income and use the property as their primary residence for the period of the forgivable loan
3. The home must meet the requirements of all applicable City Codes
4. The home must be located on a lot that meets all residential requirements including setbacks, utility easements, infrastructure access, etc.

These incentives and others will be granted or denied solely at the discretion of the City of McKinney, subject to the availability of funds and the community value of the project.

Eligibility for Other Affordable Housing Programs

In order to qualify for Home Buyer Assistance (HBA) both the home and the first-time homebuyer(s) must meet certain income and eligibility requirements. These requirements and information about the program can be found in the *HBA Procedures.*

In order to qualify for Emergency Repair, Minor Repair, Rehabilitation, and Major Rehabilitation/Reconstruction, both the home and the home owners must meet certain income and eligibility requirements.

Surplus Land Discount Application Process

In addition, single-family affordable housing developers are eligible to purchase tax-foreclosed or fee simple surplus property from the City of McKinney deemed to be suitable for the construction of new, quality, accessible, affordable housing for income-eligible residents of the City of McKinney.

Each affordable housing developer, nonprofit and for-profit, wanting to purchase City-owned land will submit an application for *Surplus Land and Affordable Housing Development Application* to the Housing and Community Development department. The application includes the following information:

a. A plan to develop the land as affordable housing for low-to-moderate income individuals or families in compliance with all applicable City ordinances and state and federal laws.
b. A timetable showing the commencement of construction and completion of affordable housing on the land by low-to-moderate income individuals or families.
c. Identification and sources of the necessary project financing.
d. Evidence that the requestor is not delinquent in payment to the City of any fees, taxes, or liens.

2. Applications meeting all requirements will be forwarded to the other taxing entities for review (if necessary). If approved by other taxing entities, the proposal will be forwarded to the McKinney Housing Finance Corporation (MHFC) for review. If the requestor does not meet all requirements or the proposed development is not accepted, the requestor will be notified in writing. This notice will include the reason for rejection.

3. If approved by the MHFC, the proposal will go before City Council for adoption by Resolution. If the proposal is adopted by Resolution, the requestor will submit a cashier's check for the proposed amount payable to the Gay, McCall, Issacks, Gordon and Roberts, P.C.

4. Conveyance will be by Special Warranty deed, to be executed by the appointed representative of each taxing entity. The Special Warranty Deed will contain:
    a. A copy or summary of the proposal from the developing organization and a requirement that the property be developed by the organization in accordance with the proposal, including the timetable specified therein.
    b. Reference to state-mandated redemption periods according to state law.
    c. Deed restrictions requiring the purchaser to:
        i. Restrict the sales or rental price of the housing unit to be affordable to low-to-moderate income individuals and families per HUD Guidelines.

Definitions

1. Qualified Non-Profit Builder:
    - A non-profit organization that develops housing for low-to-moderate-income individuals and families as a primary activity to promote community-based revitalization of the municipality;
    - A non profit corporation described by 26 U.S.C. Section 501(c)(3) that:
        - has been incorporated in this state for at least one year;
        - has a corporate purpose to develop affordable housing that is stated in its articles of incorporation, by-laws, or charter;
        - has at least one-fourth of its board of directors residing in the municipality; and
        - engages primarily in the building, repair, rental, or sale of housing for low income individuals and families; or
    - A religious organization that:
        - owns other property located in the municipality that is exempt from taxation under Section 11.20 Tax Code; and
        - has entered into written agreement with the municipality regarding the revitalization of land.

2. Low - to - Moderate-Income Individuals and Families
   An individual or family whose annual income does not exceed 80 percent of the area median income, with adjustments for the family size, as determined and annually updated by U.S. Department of Housing and Urban Development.

3. Affordable Housing:
    - Housing that:
        - is sold or rented to a low or moderate income family; and

- has a purchase price and an estimated appraised value at acquisition that does not exceed HOME Homeownership Value Limits established and published annually by U.S. Department of Housing and Urban Development; or
- has rents that do not exceed established annual guidelines

4. Affordable Housing Development Incentives:
    - Those incentives granted to developers, both for-profit and non-profit, for the development of quality, accessible and affordable housing within the city.
    - Those incentives or grants to individuals for the preservation, acquisition or rehabilitation of quality, affordable housing.

II. LOT DISPOSITION

Purpose

- To outline the process by which interested parties may purchase surplus and/or tax foreclosed properties, including private sale of property to qualified non-profit organizations and affordable housing builders, in furtherance of the City of McKinney's policy to create and preserve affordable housing opportunities for low-to-moderate-income families.
- Property owned by the City of McKinney, including property acquired by tax foreclosure, that is deemed to be surplus property, will be for Affordable Housing opportunities unless otherwise determined not suitable for Affordable Housing. Net proceeds, if any, will be used in the Community Housing Fund affordable housing program. (Net proceeds are the amounts remaining after all judgment and court costs have been paid and each taxing entity has received its pro rata share of taxes owed.

Disposal of Properties Not Suitable for Affordable Housing

Property owned by the City of McKinney, including property acquired by tax foreclosure, that is deemed to be surplus property, and not suitable to be included in the Affordable Housing program, may be sold in one of the following three ways: by sealed bid, to abutting property owner, or by private sale.

1. Sale in accordance with Chapter 272 of the Texas Local Government Code by sealed bids where the property can be developed independently.
    a. The property shall be appraised by a certified independent appraiser or the most recent appraisal roll approved by the Appraisal Review Board will be used to determine fair market value.
    b. The property will be advertised on at least two separate dates in a local newspaper.
    c. Bid opening will be at least 14 days after the second advertisement is published.

d. Bids are to be submitted in writing and are to include the amount of the bid, street location of property, account number of property, name, address and telephone number of the bidder, and the letter is to be signed and dated by the bidder. Bids are to be submitted to the Purchasing Department, there to be stamped "Received" and dated.
e. It will be verified that the bidder has no delinquent taxes on other properties in Collin County.
f. The highest bidder will sign a "Conflict of Interest" statement.
g. City Council will accept the bid by Resolution, and the bidder will submit a cashier's check for the bid amount payable to Gay, McCall, Isaacks, & Roberts, P.C.
h. Conveyance will be by Special Warranty deed, to be executed by the appointed representative of each taxing entity. The Special Warranty Deed will contain reference to state-mandated redemption periods and the sale will not be concluded until the expiration of the redemption period.
i. The proceeds of resale will be distributed by the tax attorney in accordance with Section 34.06 of the Texas Property Tax Code, as amended.
j. If the buyer requests a title policy, the buyer shall select the title company, provide any required closing documents, pay all costs associated with closing and arrange for the closing on the property.
k. The title company will file the Special Warranty Deed, and any Release of Lien, in the Deed Records of Collin County.
l. If no title company is involved, the buyer is responsible for filing the Special Warranty Deed and any Release of Lien in the Deed Records of Collin County within sixty (60) days after purchase.
m. The taxing entities will delete any balances remaining on tax accounts.

2. Sale to the abutting property owner when the property is so small or irregularly shaped that it cannot be developed independently.
   a. Offers from abutting property owners will be accepted.
   b. It will be verified that the bidder has no delinquent taxes on other properties in Collin County.
   c. City Council will accept the highest offer by Resolution, and the bidder will submit a cashier's check for the purchase price payable to Gay, McCall, Isaacks & Roberts, P.C.
   d. Upon approval, a Special Warranty Deed will be prepared, to be executed by the appointed representative of each taxing entity. The Special Warranty Deed will contain reference to state-mandated redemption periods and the sale will not be concluded until the expiration of the redemption period.
   e. The proceeds of resale will be distributed by the tax attorney in accordance with Section 34.06 of the Texas Property Tax Code, as amended.
   f. If the buyer requests a title policy, the buyer shall select the title company, provide any required closing documents, pay all costs associated with closing and arrange for the closing on the property.
   g. The title company will file the Special Warranty Deed, and any Release of Lien, in the Deed Records of Collin County.

h. If no title company is involved, the buyer is responsible for filing the Special Warranty Deed and any Release of Lien in the Deed Records of Collin County within sixty (60) days after purchase.
i. The taxing entities will delete any balances remaining on tax accounts.

3. Private Sale.
   a. Property owned by the City of McKinney that is deemed to be surplus property may be sold by private sale.
   b. Upon receipt of a written offer of an amount not less than the lesser of the amount of the judgment or market value, plus costs of sale and resale, the offer will be forwarded for review by each taxing entity for approval.
   c. It will be verified that the bidder has no delinquent taxes on other properties in Collin County. After approval by other taxing entities,if applicable, City Council will accept the highest offer by Resolution, and the bidder will submit a cashier's check for the purchase price payable to Gay, McCall, Isaacks, Gordon & Roberts, P.C..
   d. Upon approval, a Special Warranty Deed will be prepared, to be executed by the appointed representative of each taxing entity. The Special Warranty Deed will contain reference to state-mandated redemption periods and the sale will not be concluded until the expiration of the redemption period.
   e. Upon the sale of tax-foreclosed properties, the proceeds of resale will be distributed by the City in accordance with Section 34.06 of the Texas Property Tax Code, as amended.
   f. If the buyer requests a title policy, the buyer shall select the title company, provide any required closing documents, pay all costs associated with closing and arrange for the closing on the property.
   g. The title company will file the Special Warranty Deed, and any Release of Lien, in the Deed Records of Collin County.
   h. If no title company is involved, the buyer is responsible for filing the Special Warranty Deed and any Release of Lien in the Deed Records of Collin County within sixty (60) days after purchase.
   i. The taxing entities will delete any balances remaining on tax accounts.

- **Disposal of Properties Suitable for Affordable Housing**

Property owned by the City of McKinney, deemed to be surplus property and suitable to be included in the Affordable Housing Program, may be sold at a negotiable discount to qualified nonprofit developers and affordable housing developers in the following way:

1. Each affordable housing developer, nonprofit and for-profit, wanting to purchase land will submit a *Proposal for Affordable Housing Development* to the Housing and Community Development department. This document includes the following information:

a. A plan to develop the land as affordable housing for low-to-moderate income individuals or families in compliance with all applicable City ordinances and state and federal laws.

b. A timetable showing the commencement of construction, completion construction, and occupancy of affordable housing on the land by low-to-moderate income individuals or families.
c. Identification and sources of the necessary project financing.
d. Evidence that the requestor is not delinquent in payment of taxes on any other properties in Collin County.

2. Applications meeting all requirements will be forwarded to the McKinney Housing Finance Corporation (MHFC) for review. If the requestor does not meet all requirements or the proposed development is not accepted, the requestor will be notified in writing. This notice will include the reason for rejection. If the application is approved by the MHFC, the application will be forwarded to City Council for final approval.
3. If approved by the MHFC, the requestor's proposal will be routed to all involved taxing units for review.

4. If approved by taxing units, the proposal will go before City Council for adoption by Resolution. If the proposal is adopted by Resolution, the requestor will submit a cashier's check for the proposed amount payable to the Gay, McCall, Issacks, and Roberts, P.C.

5. Conveyance will be by Special Warranty deed, to be executed by the appointed representative of each taxing entity. The Special Warranty Deed will contain:

a. A copy or summary of the proposal from the developing organization and a requirement that the property be developed by the organization in accordance with the proposal, including the timetable specified therein.
b. Reference to state-mandated redemption periods according to state law.
c. Deed restrictions requiring the purchaser to:

1.Restrict the sales price of the housing unit to be affordable to low-to-moderate income individuals and families per HUD Guidelines.

2.Restrict the monthly cost of rental units to the guidelines set yearly by HUD

Definitions

1. <u>Qualified Non-Profit Builder:</u>

- A non-profit organization that develops housing for low income individuals and families as it's primary activity to promote community-based revitalization of the municipality;
- A non-profit corporation described by 26 U.S.C. Section 501(c)(3) that:
  - has been incorporated in this state for at least one year;
  - has a corporate purpose to develop affordable housing that is stated in its articles of incorporation, bylaws, or charter;
  - has at least one-fourth of its board of directors residing in the municipality; and

- engages primarily in the building, repair, rental, or sale of housing for low income individuals and families; or

- A religious organization that:
  - owns other property located in the municipality that is exempt from taxation under Section 11.20 Tax Code; and
  - has entered into written agreement with the municipality regarding the revitalization of land.

2. Low-to-Moderate-Income Individuals and Families:

An individual or family whose annual income does not exceed 80 percent of the average median family income (AMFI) for the area adjusted for family size (AMFI), as determined and annually updated by U.S. Department of Housing and Urban Development.

3. Properties:

Properties within the corporate limits of the City of McKinney that have been acquired by the City and are considered surplus, or that have been acquired by the City or other taxing unit pursuant to Chapters 33 and 34 of the Texas Property Tax Code, as amended.

4. Affordable Housing:
   - Owner occupied housing that:
     - is sold or resold to a low-to-moderate-income family; and
     - has a purchase price and an estimated appraised value at acquisition that does not exceed HOME Homeownership Value Limits established and published annually by U.S. Department of Housing and Urban Development in Section 92.254(a)(2)(iii) of the Final Rule, as amended; or
   - Renter occupied housing for which housing expenses do not exceed U.S. Department of Housing and Urban Development fair market rents, as defined in Part 888, Title 24 of the code of Federal Regulation, as amended.

5. Market Value:

The appraised value of the property according to the most recent appraisal roll approved by the Appraisal Review Board or the appraised value by an independent appraisal conducted within the last 6 months.

REFERENCE

Section 34.015 of the Texas Property Tax Code allows land acquired by a municipality following the foreclosure of a tax lien in favor of the municipality or the seizure of the land under Subchapter E, Chapter 33 to be sold if the land is sold to:

1) a nonprofit organization that develops housing for low income individuals and families as a primary activity to promote community-based revitalization of the municipality;

2) a nonprofit corporation described by 26 U.S.C. Section 501(c)(3) that:

(A) has been incorporated in this state for at least one year;
(B) has a corporate purpose to develop affordable housing that is stated in its articles of incorporation, bylaws, or charter;
(C) has at least one-fourth of its board of directors residing in the municipality; and
(D) engages primarily in the building, repair, rental, or sale of housing for low income individuals and families; or

3) a religious organization that:
(A) owns other property located in the municipality that is exempt from taxation under Section 11.20; and
(B) has entered into a written agreement with the municipality regarding the revitalization of the land.

Definitions

1. Qualified Non-Profit Organization:

- A non-profit organization that develops housing for low income individuals and families as it's primary activity to promote community-based revitalization of the municipality;
- A non profit corporation described by 26 U.S.C. Section 501(c)(3) that:
  - has been incorporated in this state for at least one year;
  - has a corporate purpose to develop affordable housing that is stated in its articles of incorporation, bylaws, or charter;
  - has at least one-fourth of its board of directors residing in the municipality; and
  - engages primarily in the building, repair, rental, or sale of housing for low income individuals and families; or
- A religious organization that:
  - owns other property located in the municipality that is exempt from taxation under Section 11.20 Tax Code; and
  - has entered into written agreement with the municipality regarding the revitalization of land.

2. Low and Moderate-Income Individuals and Families
An individual or family whose annual income does not exceed 80 percent of the area median income, with adjustments for the family size, as determined and annually updated by U.S. Department of Housing and Urban Development.

3. Properties:
Properties within the corporate limits of the City of McKinney that have been acquired by the City and are considered surplus, or that have been acquired by the City or other taxing unit pursuant to Chapters 33 and 34 of the Texas Property Tax Code, as amended.

5. Affordable Housing:
Owner occupied housing that:

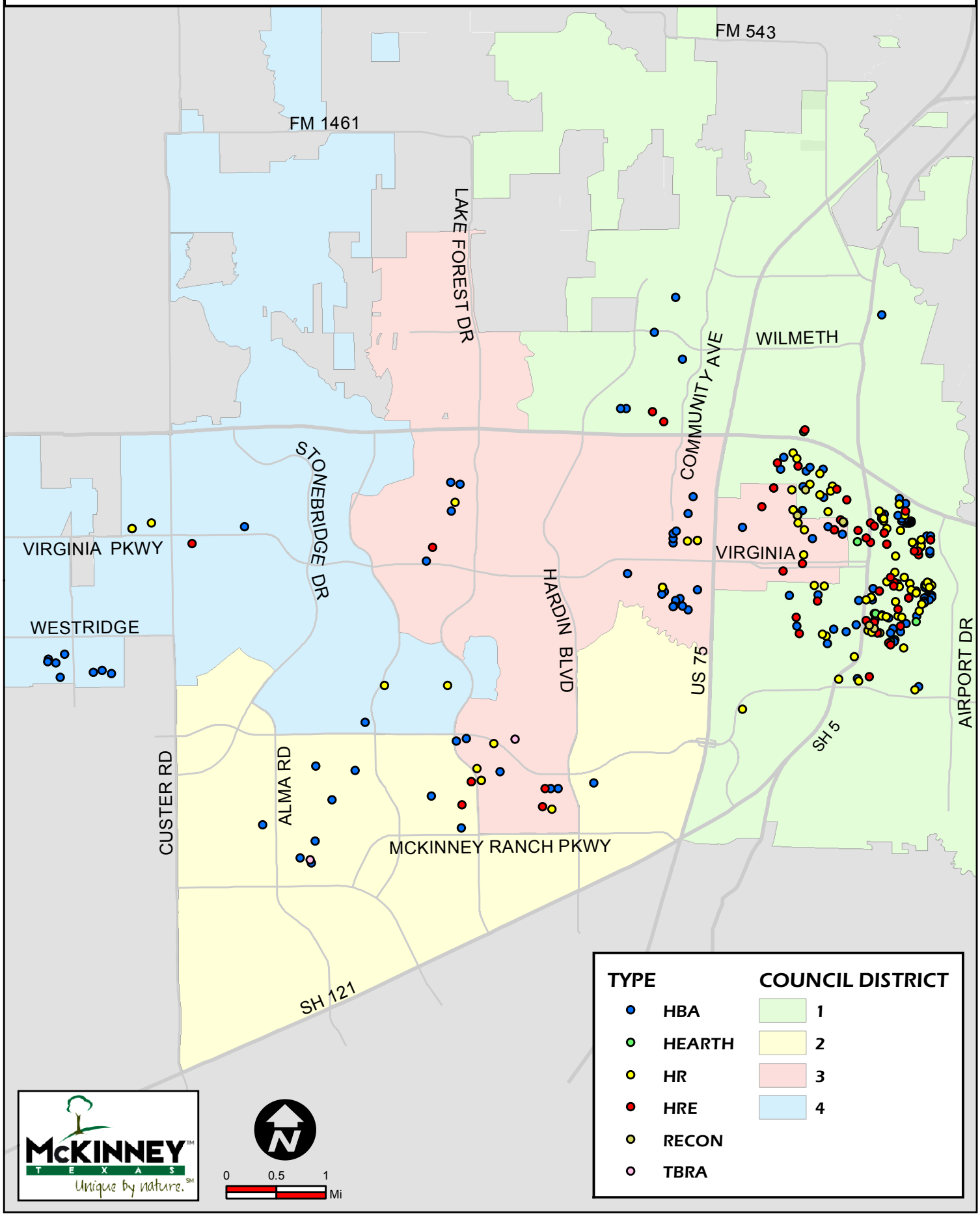
- is sold or resold to a low or moderate income family; and
- has a purchase price and an estimated appraised value at acquisition that does not exceed 95 percent of the median purchase price for the area based on Federal Housing Administration (FHA) single family mortgage program data for newly constructed housing and published annually by U.S. Department of Housing and Urban Development in Part 203, Title 24 of the Code of Federal Regulations, as amended; or

- Renter occupied housing for which housing expenses do not exceed U.S. Department of Housing and Urban Development fair market rents, as defined in Part 888, Title 24 of the code of Federal Regulation, as amended.

6. Market Value:

The appraised value of the property according to the most recent appraisal roll approved by the Appraisal Review Board or the appraised value by a certified independent appraisal conducted within the last 6 months.

Housing Program Projects



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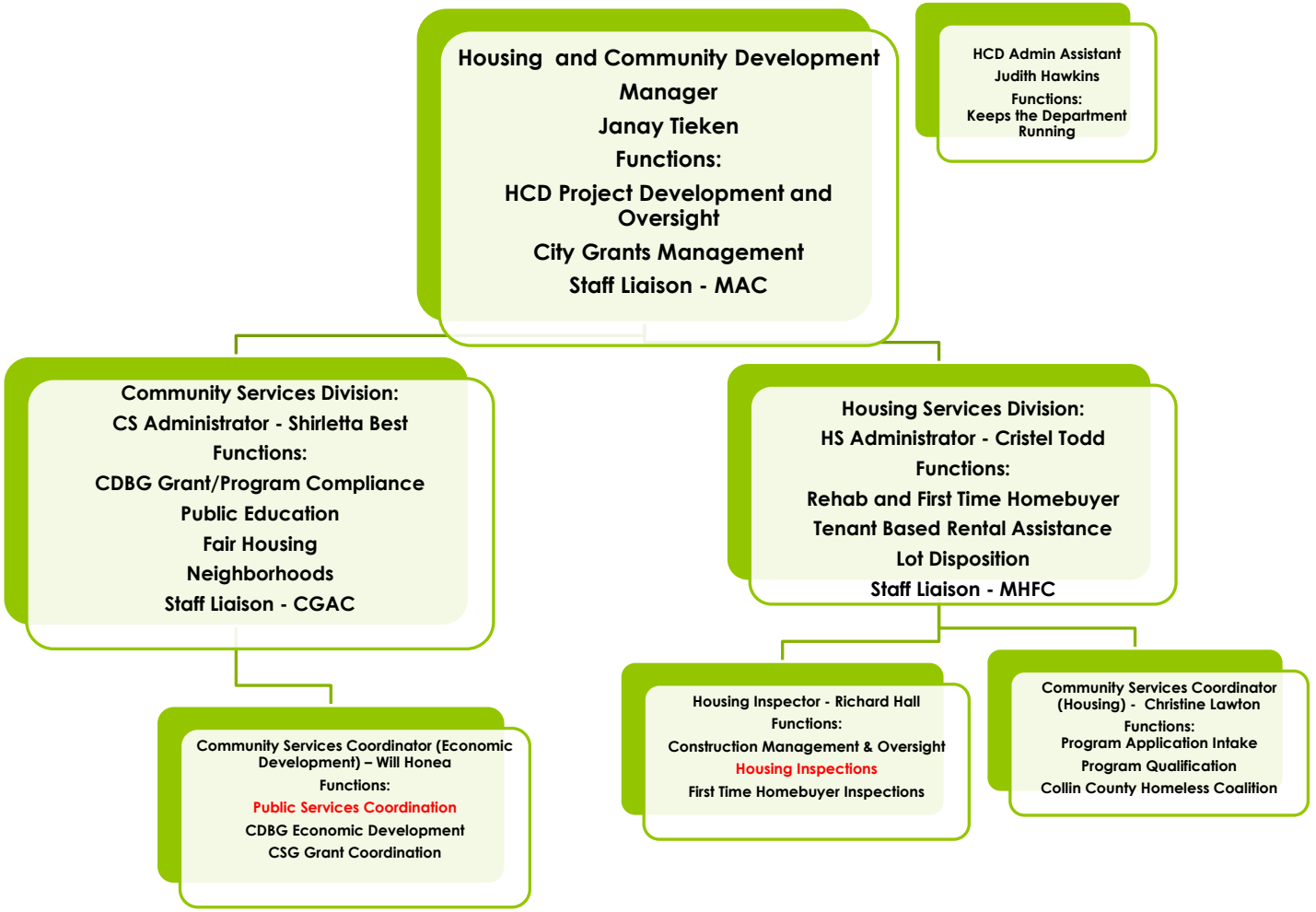
Department of Housing and Community Development

City Council Update
November 16, 2015

Housing and Community Development



Department of Housing & Community Development

Housing Services Division

Housing Services Mission

- To support the production and preservation of a variety of housing options, affordable to individuals and families earning 80% or below of the Area Median Income - $56,300 - throughout the City of McKinney

This is "Affordable Housing"

$204,000

$190,000

$210,000

Emergency Repairs (CDBG)

Eligible Repairs

- Immediate health and safety risks
- For those making 80% or below AMI
- Eligible individuals and families get one per year

Housing Rehabilitation Assistance (CDBG)

Eligible Repairs

- Install ramps, widen doorways
- Install grab bars, install wheel chair accessible shower
- Heating and plumbing repairs

- Electrical repairs
- Structural repairs, especially roofs, porches, windows, and doors
- Repairs needed to meet City Code
- Replacement of essential built-in appliances
- Vinyl siding in lieu of exterior paint
- Foundation repairs

Housing Reconstruction (TDHCA)

For homes that require $40,000 or more in repairs

- For those making 60% or below AMI
- <=30% deferred forgivable -5yrs
- >30% and <=50% deferred forgivable -10yrs
- >50% and <=60% deferred forgivable -15yrs

First Time Homebuyer Program (TDHCA)

Tenant Based Rental Assistance (TDHCA)

- The Tenant Based Rental Assistance (TBRA) program is a federally funded program regulated by the U.S. Department of Housing and Urban Development (HUD), managed by the City of McKinney. The funding source for the TBRA program is HOME program funding through the Texas Department of Housing & Community Affairs

- The City of McKinney TBRA program provides rental housing assistance, for up to two years, for clients of the Samaritan Inn that are enrolled in a Self-Sufficiency Program.

Lot Disposition

- The Housing Services Division oversees the disposition of tax foreclosed and fee simple real property held by the City
- Property may be sold to qualified non-profit organizations and private builders of affordable housing
- Upon the sale of tax-foreclosed properties, the proceeds of resale will be distributed by the City in accordance with Section 34.06 of the Texas Property Tax Code, as amended

Affordable Multi-family

- The Housing Services Division coordinates City participation in affordable housing projects
- With City participation, Newsome Homes is being reconstructed from a fifty-year old, 64 unit property, to a new 180 unit property for low-income seniors and persons with disabilities
- Millennium MF was constructed with 164 units. 34 are market rate, the remainder are affordable units

Redevelopment Funding Tools

- Community Revitalization Plan (CRP) Allows cities to target areas where they want to bring in outside investment
- New Market Tax Credits (NMTC)
- Historic Tax Credits
- 4% and 9% tax credits

Liaison to McKinney Housing Finance Corporation (MHFC)

- Seven member Corporation appointed by City Council
- Organized under the Texas Housing Finance Corporations Act, Chapter 394, Local Government Code, for the public purpose of developing decent, safe, and sanitary housing for persons of low and moderate income at prices they can afford
- The Act authorizes the Corporation to issue its revenue obligations to accomplish such public purpose

Affordable Housing Policy and Procedures

- Community Revitalization Plan (CRP) Allows cities to target areas where they want to bring in outside investment
- New Market Tax Credits (NMTC)
- Historic Tax Credits
- 4% and 9% tax credits

Department of Housing & Community Development

Community Services Division

Community Services Division

- The Community Services Division oversees the Community Development Block Grant (CDBG) Program, Community Support Grants, Public Service Grants and Economic Development

- Funding recommendations for these programs are made by the Community Grants Advisory Commission

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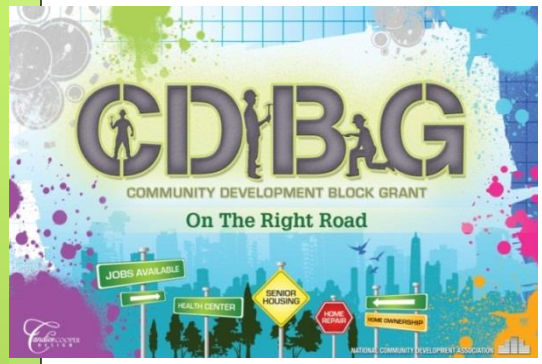


Community Development Block Grant

- The CDBG grant funds the City's Housing Rehabilitation, Public Services, Economic Development and Public Awareness Programs.
- Provides benefit to low-to-moderate income persons and households to provide affordable housing and impact through direct services and agency programs
- Determines the City's Housing & Community Development Goals through Citizen Participation and the 5-year Consolidated Plan

$703,937 Community Development Block Grant (CDBG)

- FY16 Reallocation of $414,805 = $1,118,742 budget
- FY 16 15% of Allocation goes to Public Service funding of $105,569

Community Support Grants (CSG)

- Annually from the General Fund
- The Community Support Grant – priorities but not limited to: Housing, Disaster Aid, Health & Medical Treatment, Transportation, Recreation/Sports and Basic Needs including Food and Shelter
- FY16 Funding of $119,700
- FY16 Requests of $679, 413
- Thirty-four (34) agencies applied for funding. Double previous year's requests

Sunrise Daycare
Façade $20,555

CDBG Funded Economic Development

- FY16 Allocation of $357,730
- Includes funding for Façade Improvement Program, Microenterprise Grants and Small Business Loans

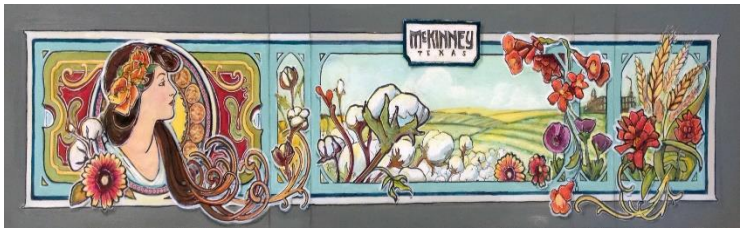
Community Grants Advisory Commission

- The CDBG recommendations are approved through the Annual Action Plan each spring and the Community Support Grant is approved though a separate Application Process in the fall

- The Commission hosts a minimum of four public hearings annually for funding requests. Recommendations are sent to City Council for approval

McKinney Arts Commission

- **Mission:** *To create a vibrant and viable arts community in which diverse, high quality arts opportunities are available to McKinney residents and visitors.*
- FY16 Funding of $200,000
  - Public Art Mural
  - Rotating Art Exhibits
  - Community Arts Center
  - Local Artists Displayed in City Libraries



Grants Administration Division

- $14,484,481in FY15 grant awards

  Largest grant awards:

  - Airport: $6,058,063
  - Engineering: $3,867,750
  - Housing and Community Development: $2,102,832
  - Police and Fire: $432,806

15-1127

TITLE: Consider/Discuss Potential Approach for Orderly Growth and Annexation Planning

COUNCIL GOAL: Direction for Strategic Growth

MEETING DATE: November 16, 2015

DEPARTMENT: Planning Department

CONTACT: Jennifer Arnold, Planning Manager
Brian Lockley, AICP, CPM, Director of Planning
Michael Quint, Executive Director of Development Services

RECOMMENDED CITY COUNCIL ACTION:

- Discuss and provide direction to Staff.

ITEM SUMMARY:

- This item is to discuss and provide direction on a potential approach for orderly growth and annexation planning in McKinney.

- The area of McKinney's current city limits is 66.82 square miles. However, the ultimate area of McKinney's city limits is roughly 116 square miles. This means that roughly 50 square miles of unincorporated land currently sits within McKinney's extraterritorial jurisdiction (ETJ).

- While a municipality can plan future development conditions for land within its ETJ, it cannot exercise land use control (i.e. zoning) or taxing authority over those unincorporated areas.

- As such, many Texas cities establish a municipal annexation plan as a means by which to ensure orderly growth, development and fiscal health over the short and long term.

- Given the tremendous amount of growth expected to occur in McKinney over the next several years, Staff strongly recommends that the City Council consider

adopting a plan for the systematic annexation of unincorporated land in its ETJ.

- By establishing a new Municipal Annexation Plan, the City will be able to better protect the long term interests of the City in terms of desired growth patterns, development quality, and fiscal stability.

- If the City Council is supportive of this, Staff will begin coordinating with the City Attorney's Office to draft a Municipal Annexation Plan. Staff anticipates that a Municipal Annexation Plan could be ready for consideration by Council in the Spring of 2016.

BACKGROUND INFORMATION:

- The annexation of land into a municipality's corporate limits is authorized and governed by Chapter 43 of the Texas Local Government Code.

- In accordance with Texas Local Government Code, there are generally three ways that annexations can occur:

  1. Voluntary Annexations
     A private property owner (or owners) may request to be annexed into a City's corporate limits. Historically speaking, the majority of land annexed in McKinney over the last 10 years has been voluntary.

  2. Annexations in accordance with a Municipal Annexation Plan (Involuntary)
     Properties that are to be involuntarily annexed over time are shown on a map that is published publicly. The map must be published for three years before annexation proceedings may occur.

  3. Annexations in Exception to a Municipal Annexation Plan (Involuntary)
     Subsection 43.052(h) of the Texas Local Government Code indicates certain conditions and requirements that, if met, authorize a city to involuntary annex property that is not shown on a Municipal Annexation Plan. The involuntary annexations that were approved in May 2015 were conducted under these exceptions.

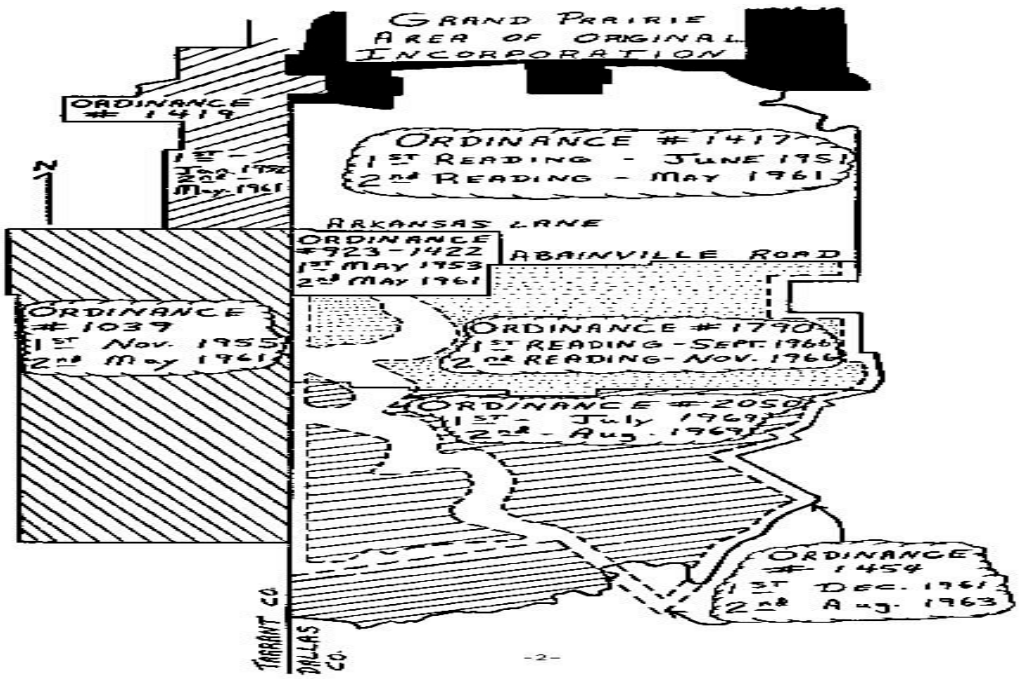
- In 1999, the City of McKinney adopted an Annexation Plan that, in short, stated the City of McKinney did not intend to initiate involuntary annexations based on a municipal annexation plan. The 1999 Annexation Plan did state however, that the City would reserve the right to involuntarily annex certain properties under the exemption clause of Texas Local Government Code.

SUPPORTING MATERIALS:

Municipal Annexation in Texas
City of McKinney and ETJ (2015)
1999 McKinney Annexation Plan
Presentation

MUNICIPAL ANNEXATION IN TEXAS

"IS IT REALLY THAT COMPLICATED?"



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I. INTRODUCTION

Annexation, specifically unilateral annexation, is to say the least one of the most debated issues in municipal law. Rarely a week goes by that annexation battles do not show up in newspaper headlines across the state. Interesting, however, is the fact that from the enactment of the Municipal Annexation Act in 1963 until fairly recently, the legislature rarely acted to restrict city authority in this area.

The legislative outlook for annexation changed dramatically in the 1990s. In 1996, the City of Houston annexed an upscale subdivision called Kingwood, bringing in almost 50,000 new residents. At the time, Kingwood was a twenty-year-old subdivision that was fully built-out with large, expensive homes. When the developer first approached Houston for water and sewer extensions, the city and the developer agreed that when the City of Houston got closer to the subdivision, the subdivision would consent to annexation. It took Houston close to twenty years to get there. Upon the city's arrival, the citizens of Kingwood organized and showed up literally in busloads at the Seventy-Fifth Legislative Session in 1997 with banners that read "Free Kingwood."

The protests of Kingwood residents and others ultimately resulted in the passage of Senate Bill 89 in 1999, the provisions of which are still being debated (and often litigated) over ten years later. S.B. 89 does not prohibit cities from annexing. The bill merely makes the process much more difficult, expensive, and time consuming in certain circumstances. However, the changes made by S.B. 89 do not have much significance for general law cities and home rule cities that annex smaller, sparsely-occupied areas or annex only by petition. The greatest impact is on home rule cities that wish to exercise unilateral annexation authority to bring in large, existing residential subdivisions.

In response to several annexations over the past years, several state legislators have stated that they believe that residents of an area should have the right to vote on whether or not to be annexed. The annexation policies of the City of San Marcos succinctly and clearly summarize the arguments against voter permission:

> Cities annex territory to provide urbanizing areas with municipal services and to exercise regulatory authority necessary to protect public health, safety and welfare. *Annexation is also a means of ensuring that residents and businesses outside a city's corporate limits who benefit from access to the city's facilities and services share the tax burden associated with constructing and maintaining those facilities and services.* Annexation may also be used as a technique to manage growth.[1]

Any materials provided by TML are intended for informational purposes only and should not be substituted for the advice of local counsel. For a PDF copy of this paper, please

[1] http://www.ci.san-marcos.tx.us/departments/planning/Annexation_Policies.htm?menu=DP6.

visit **www.tml.org**. Please contact Scott Houston with the TML Legal Services Department at 512-231-7400 or shouston@tml.org with questions or concerns.

II. A (NOT SO) BRIEF LEGISLATIVE BACKGROUND OF ANNEXATION

The original method of incorporation of cities under the Republic of Texas, and later the State of Texas, was by special law. In other words, the Congress or the Legislature passed a bill, very similar in appearance to a modern home rule charter, that incorporated a city and delineated its powers and duties. For the most part, special law cities had no annexation authority. To expand the city's boundaries, the Congress or legislature had to amend the law that created the city.

In 1858, the first statute allowing incorporation of a city under the general laws was passed. An 1858 amendment allowed for annexation by petition, and this law, along with others passed over the next several years, became the basis for general law annexation by petition as it is known today.

In 1912, the voters of Texas passed the Home Rule Amendment to the Texas Constitution. TEX. CONST. Art. XI, §5. This amendment and its accompanying legislation in 1913 gives cities over 5,000 population that adopt a home rule charter by election the full power of local self government, including the ability to unilaterally annex property. Except for the Home Rule Amendment, relatively few substantial changes were made to annexation laws from 1858 through 1963.

In 1963, the Legislature enacted the Municipal Annexation Act (Act). The Act provided procedures for annexation and created the concept of extraterritorial jurisdiction (ETJ). The Act is now codified in Chapters 42 and 43 of the Texas Local Government Code. As mentioned previously, from the enactment of the Act until the passage of S.B. 89 in 1999, the Legislature rarely acted on a broad scale to restrict or modify city annexation authority.[2]

Nonetheless, annexation powers have given rise to complaints and have routinely come under attack in the legislature. The residents of unincorporated areas rarely favor being brought into a city involuntarily, and any city that has gone through a major annexation is well aware of how controversial the process can become. Rural landowners and others have regularly turned to their legislators for relief from city expansions, with the result that bills to curb unilateral annexations have surfaced in every session for the past fifty years. The battle heated up substantially in 1987, and the legislature passed a bill (S.B. 962, now codified in Local Government Code Sections 43.054 and 43.056) that, among other things, prohibited strip annexations of less than 1,000 feet (as opposed to the previous standard of 500 feet) and changed the requirement that the construction of capital improvements necessary for providing services to newly annexed

[2] Most of the previous information in this introduction is summarized from D. Brooks, *Municipal Law and Practice*, 22 Texas Practice Ch. 1 and T. O'Quinn, *History, Status, and Function*, Introduction to Title 28 of the TEX. REV. CIV. STAT. (Vernon 1963).

areas be initiated within 2 ½ years to a new requirement that construction begin within 2 ½ years and be substantially complete within 4 ½ years.

In 1989, the onslaught continued. That year's major piece of legislation (H.B. 3187, now codified in Local Government Code Section 43.056) provided, in addition to other requirements, that cities provide full municipal services to annexed areas within 4 ½ years, but the provision that capital improvements must only be "substantially completed" within that 4 ½ years remained intact. "Full municipal services" are defined as "services provided by the annexing municipality within its full purpose boundaries," but cities retained the right to provide varying levels of service for reasons related to topography, land use, and population density.

Very few bills related to annexation were considered by the 1991 legislature. The 1993 legislature didn't seriously consider any bills that would have restricted the annexation powers of home rule cities, but the House Urban Affairs Committee was charged with the task of examining the subject of annexation during the 1994 interim leading up to the 1995 legislative session. The committee held several public hearings around the state. Many cities and TML testified at those hearings. Disgruntled landowners who had been annexed or who feared annexation also testified before the committee.

During the 1995 session, only one annexation bill passed, but the 1997 legislative session turned out to be the "Mother of All Annexation Battles." Opponents of municipal annexation authority began to organize early with the goal of substantially amending annexation laws. The highest priority of those groups was to seek legislation that would allow the residents in an area proposed for annexation to vote on approval or rejection of the annexation. Scores of annexation bills were filed, and legislative committees held numerous hearings on these bills in front of raucous, standing-room-only crowds. City officials from all over the state testified before these committees and contacted their legislators on this issue. In the end, all efforts to erode municipal annexation authority were defeated.

The Lieutenant Governor and the Speaker of the House each appointed legislative committees to study this issue during the 1997-98 interim. These committees held hearings throughout the state – again hearing from numerous "annexation reformers" and city officials.

The 1999 legislative session turned out to be the "Mother of All Annexation Battles – Part II." Cities were committed to finding some workable solution that addressed the needs of all parties. TML met with annexation reformers throughout the legislative session because the League was convinced there was a very real risk of losing significant authority to annex if a compromise could not be reached. S.B. 89 was pre-filed early in December 1998 and was a massive rewrite of Texas annexation laws. TML and city officials testified numerous times, offered amendments, and worked to eliminate or modify the more onerous provisions. The same process occurred in the House. Although the bill dramatically changed annexation laws, it contained several key provisions that mitigated the more onerous requirements. It appeared that there

was little doubt that the bill would pass, and most of the major concerns of cities had been addressed. One of the key components for cities was that the bill did not apply its more complicated procedures to areas that are not densely populated. A major blow occurred when this provision was deleted by an amendment that was actively supported by rural unincorporated interests. Several other very detrimental amendments were added to the bill. The senate requested a conference committee to work out the differences. A conference committee was appointed, and the committee held a rare public hearing. Detrimental amendments added on the house floor were deleted, and the conference committee report was adopted on the last day that conference committee reports could be adopted.

It was difficult to predict what would occur on the annexation front during the 2001 legislative session. The Senate Committee on Intergovernmental Relations had been charged during the 2000 interim to monitor the implementation of S.B. 89. The committee sent out a survey to cities and held several public hearings. TML and city officials urged legislators to allow S.B. 89 to take full effect and to exercise extreme caution with regard to any further major modifications to the annexation statute.

In the end, that is exactly what the legislature did. Only a handful of annexation bills were filed or passed during the 2001 legislative session. H.B. 2200, a very detrimental bill for cities, did not pass. H.B. 958, H.B. 1264, and H.B. 1265 were the only bills directly relating to annexation that passed.

The most detrimental annexation bill introduced during the 2001 Legislative Session was H.B. 2200. H.B. 2200 would have, among other things: (1) removed the annexation plan exemption for an area containing fewer than 100 tracts of land on which one or more residential dwellings are located on each tract; (2) required a city to include in its annexation plan a map of areas proposed for annexation, including each county road and right-of-way that is exempt from property tax and within or contiguous to the boundaries of the area; (3) required complex notice procedures, along with public hearings, in an area proposed for annexation when a city amends its annexation plan to include that area; (4) reduced from 90 days to 20 days the time required for notice after an amendment to an annexation plan; (5) required, in most annexations, a city to obtain a petition signed by the owners of at least one-half of the appraised value of property located in the area and by the owners of property that would be subject to taxation by the city after annexation prior to the annexation; (6) required a city, for most annexations, to adopt zoning classifications that permit densities and uses that are no more restrictive than those permitted in the area prior to the annexation; and (7) required a city to obtain a petition from property owners prior to annexing a municipal utility district. H.B. 2200 never made it to the House floor.

H.B. 958, which passed, amended Chapter 43 of the Texas Local Government Code by adding §43.106, which provides that a city that proposes to annex a portion of a county road must annex the entire width of the county road and the adjacent right-of-way. H.B. 1264 also passed and amended §43.901 of the Local Government Code to provide that after two years have passed without an objection, an annexation is conclusively

presumed to have been adopted with the consent of all appropriate persons, except another city. This bill was filed in response to the Texas Supreme Court decision in *City of Murphy v. City of Parker,* 932 SW.2d 479 (Tex. 1996). Finally, H.B. 1265 amended §43.906(a) of the Local Government Code to require a city to apply for preclearance under Section 5 of the Voting Rights Act of 1965 on the earliest date permitted under federal law. This change was made because the United States Department of Justice will not preclear an action that is not final. Thus, a city should adopt its annexation ordinance and submit it for preclearance well in advance of its next municipal election.

In response to annexations by different cities during the 2002 interim, many state lawmakers vowed to further restrict annexation authority. In cities like New Braunfels, San Antonio, Wichita Falls, Santa Fe, and others, landowners protested annexations as "taxation without representation."

In a 1999 article for the Houston Review, the argument was stated as this:

> Of course, the cities consider any bill requiring a vote to be punitive. *When American colonists wanted the right to vote on British tax increases, you can bet many of the British aristocrats also felt such a proposal was punitive! It is amazing that the democratic right to vote on becoming part of a city could be considered punitive*.[3]

This argument appears flawed because, upon annexation and after preclearance, residents of an annexed area are granted the power to vote in all matters relating to the city. Thus, annexation does not impose taxation without representation. While a handful of Texas cities were accused of abusing the power to annex, the vast majority of cities use this power as a tool to manage growth and support infrastructure.

Texas cities are some of the fastest growing in the United States. Evidence of the importance of unilateral annexation exists in other states where cities do not have that power. The broad power of Texas home rule cities to annex has permitted cities in Texas to share the benefits of growth in the surrounding areas. According to many national authorities, this annexation power is the primary difference between the flourishing cities of Texas and the declining urban areas in other parts of the nation. If San Antonio, for example, had the same boundaries it had in 1945, it would contain more poverty and unemployment that Newark, New Jersey.[4] With a vote requirement, Texas cities might languish economically as do northern cities with no annexation power at all.

A massive assault on annexation authority took place during the Seventy-Eighth Legislative Session. House Bill 568, which did not pass, would have required voter approval of all annexations in Texas, including voluntary annexations. TML, to stave off

[3] *Proposal for Vote on Annexation Stimulates Debate in Texas Legislature*, Friday, April 30, 1999 by Phil Arnold.

[4] TEXAS HOME RULE CHARTERS, Terrell Blodgett (Texas Municipal League 2010)(citing an unpublished study from the Urban Policy Group, the White House (Washington, D.C. 1978).

the assault, commissioned a study on the effects of annexation, not only on cities, but on the state as a whole. A report issued by The Perryman Group on April 14, 2003, shows that overly restrictive annexation policies would harm the Texas economy by reducing gross state product, personal income, sales, employment, and population. The study identified H.B. 568 as a bill that would have drastically reduced or eliminated annexations and thus damaged the state's economy.

The Perryman report (available from TML) concludes that the H.B. 568 restrictions on annexation would have meant that "the entire character of the Texas economy will be changed in a way which notably limits its capacity to support future growth and prosperity." Restricting annexation would result in a loss of more than $300 billion in gross state product over the next 30 years, according to the report. In addition, the state would lose 1.2 million jobs and 2.3 million in population. Without annexation authority, the report says, core urban areas would deteriorate, thus eroding the viability of central cities, diminishing support networks, and imposing future costs on the entire metropolitan region. As a result, prospects for business locations, expansions, and retentions would be negatively affected.

H.B. 1541 dealt with the general powers of water districts. In addition, the bill made some changes to annexation laws dealing with strategic partnership agreements, which are used by a handful of cities.

The 2005 legislative session saw the return of annexation reform legislation in the form of H.B. 323. The bill was voted out of the House Land and Resource Management Committee early in the session, but was never send to the House floor. A new twist proposed by agricultural interests was H.B. 1772. H.B. 1772 at one point in the process would have required a city to first offer a development agreement in lieu of annexation to a landowner to allow the landowner to keep farming. Due to a procedural mistake, those provisions were removed, and the bill only applied to the rare case when general law cities annex unilaterally under Local Government Code Section 43.033. H.B 1772 also allows certain general law cities to annex areas that they surround without the consent of property owners.

The 2007 legislation session saw numerous detrimental bills filed that did not pass, including H.B. 328 (would have made it easier for a property owner to petition for disannexation for failure to provide services), and H.B. 2869 (also dealing with disannexation for failure to provide services).

H.B. 610, which passed, largely makes technical modifications to provisions dealing with provision of services by: (1) providing that a city's annexation service plan, which must be completed in the time period provided by law, must include a program under which the city will provide full municipal services in the annexed area, and must include a list of all services required by law to be provided under the plan; (2) allowing a city, under a contract for provision of services in lieu of annexation, to annex an area for full or limited purposes at any time in response to a petition of the owner of the area if the area is in the city's annexation plan, or was previously in the city's annexation plan but

was removed from the plan; and (3) allowing the governing body of a city with a population of less than 1.6 million to negotiate and enter into a written agreement for the provision of services and the funding of the services in an area to be annexed with: (a) representatives of the area appointed by the county commissioners court, if the area is included in the city's annexation plan; or (b) an owner of an area within the extraterritorial jurisdiction of the city if the area is not included in the city's annexation plan.

The big news of the 2007 session was the return of a mandatory offer of a development agreement in lieu of annexation for agricultural and other rural land. H.B. 1472 applies to land that is either: (1) eligible to be the subject of a development agreement under Subchapter G of Chapter 212 of the Local Government Code; or (2) appraised as agricultural, wildlife management, or timber land. The bill provides that: (1) a city may not annex an area described above unless: (a) the city offers to make a development agreement with the landowner that would guarantee the continuation of the extraterritorial status of the area and authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber; and (b) the landowner declines to make the agreement; (2) an area adjacent or contiguous to an area that is the subject of a development agreement is considered adjacent or contiguous to the city; (3) a provision of a development agreement that restricts or otherwise limits the annexation of all or part of the area is void if the landowner files any type of subdivision plat or related development document for the area with a governmental entity that has jurisdiction over the area, regardless of how the area is appraised for ad valorem tax purposes; and (4) a development agreement under the bill does not create vested rights. While many city officials argued that farming operations already had sufficient protections from city regulations, the Texas Farm Bureau and others strongly supported H.B. 1472. The bill adds an additional layer or bureaucracy to the process, but amendments to bill throughout the process sought to ensure that it would not limit annexations of land that is truly poised for development rather than for farming.

The 2009 session was relatively quiet on the annexation front. H.B. 98 would have attempted to overturn the Waco appeals court decision in *Karen Hall v. City of Bryan,* which dealt with disannexation for failure to provide services. Another bill, H.B. 1424, would have "flip-flopped" the burden in disannexation for failure to provide services, and would have required a city to bear the burden of proof if it received a petition. Neither bill passed.

For 2010, the Senate Committee on Intergovernmental Relations was charged to "*Review state and local policies related to development and growth in rural and unincorporated regions of the state with regard to annexation and zoning authority. Focus on impacts to private property rights. Determine the appropriateness of existing extraterritorial jurisdiction authority. Make recommendations regarding possible changes to this authority*." A hearing was held that year, and the Texas Farm Bureau raised several issues with regard to the development agreement requirement in current law. TML staff testified, and stated that over 1,000 people move to Texas each day. Growth

in both urban and rural areas of the state is inevitable. Cities should retain their current authority to deal with that growth inside city limits, in the ETJ, and through subsequent annexation. Balancing the need for sustainable development with private property rights is the goal. Specifically, the League testified that:

- **Current Extraterritorial Authority is Vital to Preparing for Future Annexation:** One of the few powers that a city may exercise to regulate in its ETJ is the ability to approve subdivision plats. A subdivision ordinance simply sets standards for infrastructure and shows lot lines, streets, alleys, parks, or other parts of the tract intended to be dedicated to public use. With the exception of border counties and Harris County and surrounding counties, each city must enter into an agreement with its county to streamline the process for plat approval in the city's ETJ. ETJ subdivision authority provides minimum standards for areas that will be annexed in the future and prevents cities from having to spend taxpayer funds to support substandard infrastructure and development after annexation.

- **Annexation is Vital to the Texas Economy:** Texas cities, unlike the cities of other states, don't receive state financial assistance or state revenue-sharing. They don't ask the state to help fund the facilities and services on which the city, region, and state rely. But cities do ask that their authority to take care of themselves not be eroded. The power to annex is one of those key authorities, and to lose it would be very detrimental to the state. A 2003 report of The Perryman Group, a well-respected economic and financial analysis firm, shows that overly restrictive annexation policies would harm the Texas economy by reducing gross state product, personal income, sales, employment, and population. The study – available from TML - demonstrates that laws limiting annexation authority would severely damage the state's economy. It is important to note that a law passed in 2007 provides that a city may not annex property that is used for agricultural purposes. Instead, the city must offer a non-annexation agreement to the property owner. So long as the property is not developed, it may not be annexed. That law, along with other laws, protects truly rural land from being annexed or unreasonably regulated.

In 2011, H.B. 1643 – which related to the term of a development agreement – provides that the governing body of a city may make a written contract, for which the total duration and any successive renewals or extensions may not exceed 45 years, with an owner of land that is located in the extraterritorial jurisdiction of the city to guarantee the continuation of the extraterritorial status of the land and its immunity from annexation by the city. Also, S.B. 1082 created some additional authority for strategic partnership agreement swith certain special districts, but also prohibited a city from regulating the sale, use, storage, or transportation of fireworks outside the city's boundaries pursuant to an SPA.

A new twist came about in legislators' attempts to thwart local annexations, and it made a local annexation have statewide ramifications. The City of College Station was in the

process of annexing an area in its extraterritorial jurisdiction for some time. The citizens of the area unsuccessfully attempted a charter-based referendum and sued the city to stop it from annexing. (The courts concluded that the lawsuit had no merit and that the city could move forward.)

But that's not the end of the story. State Representative Fred Brown (R- Bryan) introduced legislation that would stop the city in its tracks. His bill, H.B. 107, did not pass but would have prohibited the cities of Bryan and College Station from annexing an area with 50 or more inhabitants unless the persons to be annexed approve the annexation through a popular vote. The bill would, in effect, end the ability of those cities to annex populated areas.

While the bill was bracketed to two cities, the League strongly opposed it. That's because, rather than applying the consistent and reasonable annexation process in current law, the bill sets a dangerous precedent. State legislators routinely inserting themselves into the local annexation process could lead to a slippery slope on which annexations may eventually become impossible.

That's why the League testified on H.B. 107, a "bracketed bill." Limiting annexation authority is bad for the economy of individual cities, entire regions, and the state as a whole. To view the League's brief testimony in the House Committee on Land and Resource Management on March 22, go to http://www.wwwebinars.com/LUVideo3-22/LUVideo2.swf.

According to Rep. Brown, "The Texas Municipal League is very powerful in the state and they fight hard to make sure that cities can go out and annex whoever they want to without the permission of the local residents...this is why we made it only for Brazos County...so that we would have a much better chance of getting it passed in the legislation [sic]."

If legislators believe that the League will always leave bracketed bills relating to annexation alone, they are incorrect. The fact that the City of College Station has provided for ample public input and has followed the law relating to annexation is important, but not the main issue. The main issue is that broad limitations on annexation have failed to pass, and Texas cities must stand together to oppose bracketed bills because they may become the preferred method of challenging annexations.

Another bill, H.B. 2902, did pass. It was another bracketed bill that required one city to release a portion of its extraterritorial jurisdiction. Once again, the bill was bracketed, but the League opposed it due to the fear that these "targeted" attacks on municipal authority become as routine and harmful as attempts at general reform.

For the 2012 interim, the House Land and Resource Management Committee has been charged to "[e]xamine current regulatory authority available to municipalities in their

extraterritorial jurisdiction. Make necessary legislative recommendations to ensure a proper balance between development activities and municipal regulations."

III. THE IMPORTANCE OF MUNICIPAL ANNEXATION AUTHORITY TO THE LIFE AND PROSPERITY OF TEXAS CITIES[5]

Why is annexation authority so critical to Texas cities?

To understand the answer to those questions, one must look to the most basic elements of municipal finance and intergovernmental relations.

1. **Cities (city taxpayers) pay for a wide array of services and facilities that benefit entire regions and the entire state.** For example, it goes without saying that such basic activities as mail delivery couldn't take place if cities don't construct and maintain streets. The economy of Texas would crumble without city investments in the basic infrastructure upon which business and industry rely. Cities are centers of employment, health care, entertainment, transportation, and merchandising used by non-city-residents throughout the region. This means that cities must support public safety services and a physical infrastructure sufficient to serve a daily influx of visitors from throughout the metropolitan region.

2. **Most states recognize that cities should be assisted in making these expenditures that benefit entire regions and the whole state.** Virtually every state transfers state-generated revenue to cities to assist in the provision of services and facilities. They do this in recognition of the fact that cities (city taxpayers) are making expenditures that benefit all residents of the state. For example, all populous states give a portion of state gasoline tax revenue to cities to assist in street construction and repair. Many states share vehicle registration revenue or motor vehicle sales tax revenue with cities. A survey conducted by the National League of Cities found that cities across the nation receive 13 percent of their revenue from state aid.

3. **In Texas, there is virtually no state aid to cities.** Take a look at a municipal budget and try to find a revenue line item called "Transfer from State" or "State Financial Assistance." While such line items are common in other states, they're simply not present in Texas.

4. **But Texas has allowed cities to annex.** Cities have used that authority to bring adjacent areas into the city and into the system through which cities finance the services and facilities that benefit the region and state.

5. **To erode or eliminate municipal annexation authority without considering the issues of municipal revenue and intergovernmental relations would cripple cities**

[5] This section is taken from an article authored by Frank Sturzl, TML's former Executive Director, and now with Hillco Partners.

and city taxpayers. If annexation authority were to be eliminated, Texas would become the only state in the nation that denies both state financial assistance and annexation authority to its cities. Opponents of annexation cannot point to a single state that has restricted annexation authority without implementing fiscal assistance programs under which the state helps cities pay for the infrastructure on which the entire state depends.

IV. An Overview of How Annexation Works

A. The Three Questions of Annexation

Is annexation really that complicated? It depends. A better word for it might be tedious. The Municipal Annexation Act of 1963 (now found in Chapter 43 of the Texas Local Government Code) has been amended so many times over the years to address specific situations, it is sometimes hard to understand. That being said, there are essentially three questions to ask when annexing any piece of property.

1. **Why does the city want to annex?** The TML Legal Department largely advises on the annexation process from a legal rather than a policy standpoint, but it is critical for a city to understand the reasons behind an annexation to explain it to current city residents and those targeted for annexation. Most cities annex for two basic reasons: (1) to control development; and/or (2) to expand the city's tax base. Each city should carefully consider the pros and cons of annexation, and also have an understanding of why or whether it is necessary, prior to annexing. There are numerous city officials and planning and law firms in Texas with expertise in this area, and cities should take advantage of their expertise. Imposing land use controls in an area is a fairly simple proposition, but the financial aspects of why cities annex is more complicated.

2. **Does the city have authority to annex?** Once a city has decided that it wants to annex property, the first step is to determine whether it has the *authority* to annex. To determine a city's authority, it is important to understand the fundamental difference between a general law city and a home rule city. Volumes have been written on the differences between the two. For purposes of brevity, and as a basic rule of thumb, the following statement will suffice:

   > *A home rule city (usually over 5,000 population) may do anything authorized by its charter that is not specifically prohibited or preempted by the Texas Constitution or state or federal law; A general law city (usually under 5,000 population) has no charter and may exercise only those powers that are specifically granted or implied by statute.*

   The previous statement is *very* generalized, but it serves to illustrate the fundamental difference between the two types of cities for all purposes, including annexation. Annexation authority is discussed in detail later, but as a general rule

the authority to annex is found in Subchapter B of Chapter 43 of the Local Government Code. For example, Section 43.021 authorizes a home rule city to annex according to its charter, and most home rule charters authorize unilateral annexation. On the other hand, general law cities, for most annexations, must receive a request from landowners or voters prior to annexing. Some exceptions allow general law cities to annex without consent, but those are very limited. The bottom line for general law cities is that the legislature has seen fit to severely limit when they can annex.

Requirement to offer development agreement. Section 43.035 of the Texas Local Government Code was enacted in 2007. The provision should be the first place a city looks when it decides to annex because it prohibits a city from annexing an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management, unless the city offers a development agreement to the landowner that would:

- guarantee the continuation of the extraterritorial status of the area; and
- authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber.

A landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. An annexation without offering an agreement is void. The intent is to allow a landowner who truly intends to continue using his land for agriculture, wildlife management, or timber management to remain outside of a city's limits, but not to allow unscrupulous developers to subvert municipal regulations.

Requirement that area be in the city's ETJ. An area to be annexed must be within the city's extraterritorial jurisdiction (ETJ), and the area to be annexed cannot be located within the ETJ of another city.

Authority to annex unilaterally (without consent). Most home rule charters in Texas, read in conjunction with Chapter 43 of the Local Government Code, provide for unilateral (non-consent) annexation by home rule cities. Chapter 43 provides the statutory authority for general law cities to annex, and Section 43.033 of the Texas Local Government Code is the only major exception to the rule that general law cities may only annex by petition (with consent). That section allows for unilateral annexation by a city with a population between 1,000 and 5,000 if the city: (1) is providing the area with water or sewer service; and (2) the area: (A) does not include unoccupied territory in excess of one acre for each service address for water and sewer service; or (B) is entirely surrounded by the city and the city is a type A general-law city. (Section 43.033 also has a stand-alone development agreement offer requirement that is similar to section 43.035.) Other specific provisions may allow a general law city to annex without consent, but they are very limited.

Authority to annex by petition (with consent). All cities are authorized to annex a sparsely occupied area on petition of the area's landowners, if the area meets certain requirements. In addition, general law cities may annex inhabited areas if the majority of the qualified voters of the area are in favor of becoming part of the city.

3. **What annexation procedures must a city follow?** The provisions that give a city the power or *authority* to annex are generally codified in Subchapter B of the Texas Local Government Code and in the charter of a home rule city. However, the *procedures* that a city must follow for an annexation are codified in Subchapters C (plan annexations – three-year process) or C-1 (exempt annexations – much shorter process) of the Local Government Code. What subchapter to follow is based on whether or not the area must be included in an annexation plan. The procedures prescribed by Subchapters C or C-1 must be followed for every annexation of any type. [6]

   Annexation Plan. Every city in Texas was required to adopt an annexation plan on or before December 1, 1999. The term "annexation plan" is a legal term of art, and is adopted for the purposes of deciding which procedures apply to the annexation of a particular area. Certain types of area are exempt from the plan requirement. For example, if an area contains fewer than 100 residential dwellings, the area is not required to be placed in an annexation plan. Also, if the land is annexed by petition of area landowners or voters, the area is not required to be in a plan. Because of these exemptions, it is probably fair to say that many annexations will not be required to be in an annexation plan. Thus, some cities

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[6] The Municipal Annexation Act of 1963 (the Act that imposed the procedural requirements for annexation) provided that the provisions of the Act do not repeal any other law or part of law unless they are expressly inconsistent with other laws. In *Sitton v. City of Lindale*, 455 S.W.2d 939 (Tex. 1970), the Texas Supreme Court held that there is no inconsistency between the source of a city's power to annex (i.e., its authority to annex without consent or on petition), and the procedural requirements of the Act (i.e., the notice and hearing requirements). Because there was no inconsistency, the procedural requirements of the Act had to be followed.

There are at least two other cases involving voluntary annexations in which the courts state that the notice and hearing procedures apply to the voluntary annexations of those territories. In the first case, *Universal City v. City of Selma*, 514 S.W. 2d 64 (Tex. Civ. App. – Waco 1974) writ ref. n.r.e., Mr. R.L. Ham petitioned Universal City to annex his 65 acres. Seven days later, Universal City annexed the Ham tract. With regard to the annexation, the court stated: "The record fails to show that Universal City complied with the notice provisions of Sec. 6, Article 970a [now codified at Tex. Local Gov't Code § 43.063] when it enacted the Ham Tract annexation ordinance. Indeed the proof on the question supports an implied finding that these notice requirements were not met. Noncompliance with these provisions would render the ordinance void when enacted." In *City of Bells v. Greater Texoma Utility Authority*, 790 S.W. 2d 6 (Tex. Ct. App. – Dallas 1990), writ den., found that the ordinance purporting to annex land at the request of the property owners, which was passed without complying with any of the notice requirements, was not valid when enacted. (In that case, the invalidity was cured by the legislature's subsequent enactment of a statute granting blanket approval to all annexations conducted three years prior.)

will have a one page plan stating that they do not intend to annex any area for which an annexation plan is required.

B. Annexation Plan

Every city in Texas was required to adopt an annexation plan on or before December 1, 1999.[7] TEX. LOC. GOV'T CODE §43.052(c)*, Statutory note (b)*. The plan must identify annexations that will occur beginning three years after the date the plan is adopted. *Id.* at §43.052(c). The term "annexation plan" is a legal term of art, and is adopted for the purposes of deciding which procedures apply to the annexation of a particular area.

Certain types of area are exempt from the plan requirement. For example, if an area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract, the area is not required to be placed in an annexation plan. *Id.* at §43.052(h)(1). In other words, an area with any number of tracts so long as no more than 99 of the tracts contain residential dwellings is not required to be in a plan.[8] Also, if the land is annexed by petition of area landowners or voters, the area is not required to be in a plan. *Id*. at §43.052(h)(2). Because of these exemptions, it is probably fair to say that many annexations will not be required to be in an annexation plan. Thus, some cities will have a one page plan stating that they do not intend to annex any area for which an annexation plan is required.[9]

If land is required to be in a plan, nothing prohibits a city from amending the plan to include new areas, but the city may not annex such areas until three years after the area is included in the plan. *Id.* at §43.052(c). If an area is removed from the plan within 18 months of being placed in the plan, the area cannot be placed back in the plan

[7] If a city has an Internet Web site, the plan and any amendments must be posted on the Web site. TEX. LOC. GOV'T CODE §43.052(j).

[8] Op. Tex. Att'y Gen No. GA-0737 (2009). In addition, §43.052(h) contains several other examples of exempt areas, including area that is or was the subject of an industrial district contract under §42.022 or a strategic partnership agreement under §43.0751, area that is located in a colonia, area that is annexed under §§ 43.026, 43.027, 43.029, or 43.031, area that is within a closed military base, or the city determines that the annexation is necessary to protect the area from imminent destruction of property or injury to persons or a public or private nuisance.

[9] In *City of San Antonio v. Hardee*, 70 S.W.3d 207 (Tex. App.—San Antonio 2001, no pet.), the plaintiff landowners challenged an annexation of their property by the City of San Antonio based on the fact that the city acted outside its authority by failing to adopt a required annexation plan under §43.052 (the landowners also argued that the city failed to request an inventory of services and facilities for an annexation service plan and to compile a comprehensive inventory of services for the annexation service plan under §43.052). The court rejected the argument, noting that Section 17 of S.B. 89 clearly states that "a municipality may continue to annex any area during the period beginning December 31, 1999, and ending December 31, 2002, under Chapter 43, Local Government Code, as it existed immediately before September 1, 1999, if the area is not included in the annexation plan, and the former law is continued in effect for that purpose." This case appears to stand for the proposition that, even if a city has never adopted an annexation plan, it may nonetheless conduct "grandfathered annexations" under the old law before December 31, 2002 or perhaps exempt annexations under §43.052(h). However, annexing any property without a plan could leave the annexation open to a procedural challenge through a *quo warranto* action. *See City of Balch Springs v. Lucas*, 101 S.W.3d 116 (Tex. App.--Dallas 2002).

for one year. *Id.* at §43.052(e). Similarly, if an area is removed from the plan after 18 months of being placed in the plan, the area cannot be placed back in the plan for two years. *Id.* If an area is placed in, and stays in, the plan, its annexation must be completed 31 days after the three-year "procedures/negotiation" period, or the city must wait five more years to annex the area. *Id.* at §43.052(g).

In addition, §43.052(f) requires that, before the 90th day after the city adopts or amends an annexation plan, the city is required to give written notice to:

1. each property owner in the affected area, as indicated by the appraisal records furnished by the appraisal district for each county in which the affected area is located;
2. each public entity, as defined by §43.053[10], or private entity that provides services in the area proposed for annexation; and
3. each railroad company that serves the municipality and is on the city's tax roll if the company's right-of-way is in the area proposed for annexation.

One issue in particular has arisen with several cities. That question is whether land that is included by a city in an annexation plan, but that is not technically required to be in the plan, may be removed without incurring the time penalties in §43.052. At least one district court has held that the answer to that question is "yes," the area may be removed without incurring penalties. In *Lago Santa Fe Property Owners' Association v. City of Santa Fe, Texas* (Cause No. 01-CV-0981), the city's motion for summary judgment in the District Court, 212th Judicial District, Galveston County, was granted in April of 2002, and the landowners did not appeal.

This suit was one of the first to involve a claim under the amended annexation provisions of §43.052. The City of Santa Fe's annexation plan, which was passed and adopted on December 9, 1999, included the Lago Santa Fe subdivision. The city subsequently realized that the subdivision was exempt from the annexation plan requirement under §43.052(h)(1) and that it was authorized to annex the area immediately. The city notified the landowners that they had been removed from the plan and that the city would annex them immediately.

The landowners petitioned the city to be placed back in the annexation plan and argued unsuccessfully that, while the city was authorized to remove them from the plan, the city would be bound by the waiting periods under §43.052. The court rejected the landowners' argument and granted summary judgment in favor of the city. Thus, the question of whether land that was included by a city in an annexation plan, but that was

[10] A "public entity" includes a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a special district, as that term is defined by Section 43.052. *Id.* at §43.053(a).

not technically required to be in the plan, may be removed without incurring the time penalties in §43.052, is answered in the affirmative by at least one district court. [11]

Section 43.052(i) provides a remedy to a landowner who believes that his property should be in an annexation plan. That provision provides that:

> A municipality may not circumvent the requirements of this section by proposing to separately annex two or more areas described by Subsection (h)(1) if no reason exists under generally accepted municipal planning principles and practices for separately annexing the areas. If a municipality proposes to separately annex areas in violation of this section, a person residing or owning land in the area may petition the municipality to include the area in the municipality's annexation plan. If the municipality fails to take action on the petition, the petitioner may request arbitration of the dispute.

In *Hughes v. City of Rockwall*, 153 S.W.3d 709 (Tex. App.-Dallas 2005, pet. filed February 23, 2005), the principal issue before the court was whether Texas Local Government Code Section 43.052(i) is procedural or substantive in nature. In that case, the city denied a private landowner's petition to include its land in the city's three-year annexation plan, and the landowner sued to enforce its right to arbitration provided by §43.052(i) after the city rejected – through a resolution of the city council – the request to arbitrate the dispute. The Dallas court acknowledged the general rule that procedural defects must be raised in a *quo warranto* proceeding, but held that §43.052(i) provides specific legislative authorization for a private person to initiate and sue to compel arbitration when a city takes no action or denies the petition for inclusion of land. *Hughes*, 153 S.W.3d at 713-14. The city appealed the decision to the Texas Supreme Court in early 2005, and a decision was finally issued in January of 2007. The Supreme Court concluded that the plain language of the statute controls, and that so long as a city considers and rejects a request for arbitration, the city has done its part. The available remedy for the landowner in that case is a *quo warranto* proceeding (a suit brought by the district or county attorney on behalf of the state to challenge alleged procedural irregularities in an annexation).[12] The last line of the opinion is one that will

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[11] See also, *Town of Fairview v. H. Roger Lawler***,** No. 05-07-01617-CV (Tex. App.—Dallas May 2, 2008). Lawler sued the city after it annexed his property under Section 43.033 of the Local Government Code. Lawler argued that the annexation was void under Section 43.141 because the city had re-annexed the land after the property had been disannexed, and that it was not within the city's three-year plan. The city argued that the land was properly annexed, that the annexation could only be disputed by a quo warranto proceeding, and that Section 43.141 did not apply because the land was not disannexed for failure to provide services under Section 43.141, but was disannexed under section 43.033. The city filed a plea to the jurisdiction on these issues, which the trial court denied. In the interlocutory appeal, the court of appeals held that Lawler did not have standing to sue because a quo warranto proceeding was the only proper procedure to dispute the annexation, and that the ten year waiting period for re-annexation does not apply in every disannexation (rather, it applies only when property is disannexed under Section 43.141).

[12] *City of Rockwall v. Hughes*, 246 S.W.3d 621 (Tex.2008). The dissent seemed to misunderstand the basic foundation of state law governing municipal annexation. According to footnote 11: "The record suggests that few cities enact three-year municipal annexation plans. In fact, amicus curiae The Texas

surely continue the legislative debate on annexation: "If the Legislature desires to amend the statute to add words so that the statute will then say what is contended for by the Estate, we are confident it will do so."

C. Senate Bill 89 Procedures

Senate Bill 89, the comprehensive rewrite of Texas annexation statutes that became law in 1999, was enacted to restrict perceived abuses of the annexation process by certain cities. The bill was effective over ten years ago, but it is still frequently referred to by name rather than where it is codified. The end result of the S.B. 89 negotiations is a complex, sometimes difficult to understand, rewrite of the procedures required to annex under Chapter 43 of the Texas Local Government Code.

Under S.B. 89, there are two basic procedural schemes, both of which are based on the inclusion or exclusion of an area in a city's annexation plan (discussed above):

1. annexation of area that is **exempt** from the annexation plan requirement, and
2. annexation of area **included in** an annexation plan.

First, city officials must decide whether an area the city wishes to annex falls under one of the exemptions from the annexation plan requirement found in Local Government Code §43.052(h). If an area is exempt from the plan requirement, a city should use Local Government Code Chapter 43, Subchapter C-1 procedures. The Subchapter C-1 procedures are almost identical to the pre-S.B. 89 procedures (see "Procedures for Areas Exempt From the Annexation Plan Requirement"), with the exception of certain more stringent notice requirements.[13]

Municipal League ("TML"), an association of more than 1,070 incorporated cities that advocates municipal interests, notes that many of its member "cities will have a one page plan stating that they do not intend to annex any area for which an annexation plan is required." See Scott N. Houston, Tex. Mun. League, Municipal Annexation in Texas: "Is It Really That Complicated?" 13 (2003)…The City of Rockwall's annexation "plan" is a near carbon copy: "[t]he City does not intend to annex any territory that in order to be annexed, is required to be in an annexation plan." City of Rockwall, Tex., Ordinance 99-49 (Dec. 20, 1999). Hughes argues that such "plans" clash with a key objective underlying the Legislature's 1999 rewrite, that annexation decisions should be driven not by circumvention of the three-year planning process but by order, thoughtfulness, and predictability. Judging by the myriad amicus briefs filed by Texas cities, expedited annexations under (h)(1) are so common that (h)(1) is actually the rule. TML's brief admits as much, saying the (h)(1) exception "is routinely used by most home rule cities. Only a handful of cities annex under an annexation plan" at all." Author's note: the purpose of S.B. 89 was to ensure provision of adequate services to highly-populated areas, and most annexations aren't of that type of area. *See also Round Rock Life Connection Church, Inc. v. City of Round Rock*, 2011 WL 589832.

[13] For example, §43.063(c) requires the notice of hearings to be published in the city's Internet Web site, if the city has one, and, for annexations that are exempt from the plan requirement under §43.052(h)(1)(100 tracts exemption), additional written notice must be sent to property owners, service providers, and railroads in the area to be annexed.

If an area is not exempt, a city must place it in an annexation plan and wait three years to annex the area under Chapter 43, Subchapter C procedures. Note: "three-year waiting period" is actually a misnomer, because a city must begin notice, inventory, service plan, hearing, and negotiation procedures almost immediately after placing an area in an annexation plan (see "Unilateral Annexation for Area Included in Annexation Plan").

V. ANNEXATION AUTHORITY

By way of a very brief introduction, it is important to understand the fundamental difference between a general law city and a home rule city. Volumes have been written on the differences between the two. For purposes of brevity, and as a basic rule of thumb, the following statement will suffice:

> *A home rule city may do anything authorized by its charter that is not specifically prohibited or preempted by the Texas Constitution or state or federal law; a general law city has no charter and may only exercise those powers that are specifically granted or implied by statute.*

The previous statement is *very* generalized, but it serves to illustrate the fundamental difference between the two types of cities for all purposes, including annexation. For more information on the differences or a more detailed evolution of the history and powers of Texas cities, please contact the TML Legal Services Department at 512-231-7400.[14]

A. Requirement to Offer Development Agreement

House Bill 1472, which became effective on May 25, 2007, enacted Section 43.035 of the Texas Local Government Code. The bill provides that a city may not annex an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers a development agreement to the landowner that would:

- guarantee the continuation of the extraterritorial status of the area; and
- authorize the enforcement of all regulations and planning authority of the city that do not interfere with the use of the area for agriculture, wildlife management, or timber.

TEX. LOC. GOV'T CODE § 43.035(b). Under the bill, the landowner may either: (1) accept the agreement; or (2) decline to make the agreement and be subject to annexation. An annexation that is completed without offering an agreement is void. As such, a city

[14] *See also* D. Brooks, *Municipal Law and Practice*, 22 Texas Practice Ch. 1 & T. O'Quinn, *History, Status, and Function*, Introduction to Title 28 of the TEX. REV. CIV. STAT. (Vernon 1963).

should document the offer and its acceptance or rejection. Even if an annexation is voluntary, a city should document the fact that the owner has rejected the offer of an agreement.

Subchapter G of Chapter 212 of the Texas Local Government Code, which was enacted in 2003 and slightly amended in 2011, allows any city (other than the City of Houston) to enter into a written contract with an owner of land in the city's extraterritorial jurisdiction to: (1) guarantee the land's immunity from annexation for a period of up to 45 years; (2) extend certain aspects of the city's land use and environmental authority over the land; (3) authorize enforcement of land use regulations other than those that apply within the city; (4) provide for infrastructure for the land; and (5) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties. TEX. LOC. GOV'T CODE § 212.172.

Development agreements under §212.172 have most frequently been used by cities as an alternative to annexing land on which new residential development is planned. The agreements allow a city to provide for sustainable residential development by controlling lot size and density, infrastructure quality, and other matters. They are often used when the new development is created as a special district. The district imposes ad valorem taxes to pay for infrastructure, and it is sometimes not in the best financial interests of current city residents or the residents of the new development to include them in the city until some future date.

After the legislative authorization of development agreements in 2003, some cities used the agreements in a somewhat novel way. While the intent of the development agreement statute was arguably to allow a city to regulate development in the city's extraterritorial jurisdiction in lieu of annexing, the broad authority granted by the statute allows for what some have termed "non-development" or "non-annexation" agreements.

In 2003, as certain cities began annexations of farmland in an attempt to regulate future development, rural landowners who claimed to have no intention of developing their property became increasingly concerned that their chosen lifestyle was in jeopardy. Influential legislators, as well as the Texas and Southwestern Cattle Raisers Association and Texas Farm Bureau, became involved in the issue. As a compromise, the cities and landowners ultimately used the authority of Section 212.172 to enter into "non-development" agreements, under which a city agrees to not annex the land for a period of time in exchange for the landowner's promise to not develop the land. Legislators and others believed that the compromise agreements were the right tool to protect farms and ranches from what they believed was unnecessary municipal annexation.

In 2005, H.B. 2305 contained provisions that were very similar to those found in H.B. 1472. Texas Municipal League staff testified on H.B. 2305 in the House Land and Resource Management Committee at that time, pointing out various concerns and unintended consequences that might result from the bill's passage. H.B. 2305 was voted from committee and placed on the House calendar for consideration, but the bill had little chance of passage due to the late date of the session.

H.B. 1772 was another bill in 2005 that slightly modified the authority of certain general law cities to annex, and was much further along in the process. As often happens near the end of a legislative session, the provisions of H.B. 2305 were added to H.B. 1772 as a Senate committee amendment. H.B. 1772 passed both the House and the Senate unanimously, but ran into trouble due to the bill's caption. A bill's "caption" describes the subject matter of the bill, and the subject matter of the bill must be germane (i.e., relevant) to the caption. H.B. 1772's caption referenced only general law cities. As such, the annexation provision relating to all cities was not germane.

A conference committee was appointed to work out the issue, and the final version of the bill added Section 43.033(a)(7) to the Local Government Code. That section contained the requirement to offer a development agreement, but it only applies to the very limited authority of certain general law cities to annex without consent. Currently, both Sections 43.033(a)(7) and 43.035, as applicable, must be complied with prior to annexing property.

Other than providing that a city may not annex an area that is appraised for ad valorem tax purposes as agricultural, wildlife management, or timber management unless the city offers to make a development agreement, Section 43.035 is silent regarding when the offer must be made. Each city should decide when it is appropriate to offer the agreement. In most cases, the offer of the agreement would be made prior to expending time and resources on the required prerequisites to annexation (e.g., service plan, notice, hearings, etc.).

A more important question is: how long does the landowner have to accept or decline the agreement? The law is also silent on this question. Section 43.033 (the general law statute that was amended in 2005) provides that a city may annex the property if "the landowner fails to accept…[the offer]…within 30 days after the date the offer is made." The fact that the new statute is silent as to time indicates that the decision of how long a city gives a landowner to accept or decline an agreement is up to each individual city. Of course, analogizing to contract law and pursuant to the Code Construction Act, the time period should be reasonable based on the circumstances. TEX. GOV'T CODE § 311.021. In addition, a city should retain documentation that an agreement was offered, whether the agreement was accepted or refused.

What provisions should be in the agreement? Local Government Code Section 212.172, read in conjunction with Section 43.035, indicates broad authority for a city to offer an agreement on the city's terms. Most cities' proposed agreement would include provisions such as:

- A guarantee by the city of "the continuation of the extraterritorial status of the area." In other words, a guarantee that the city won't annex the property for a definite term unless the terms of the agreement are violated. And a term not to exceed 45 years. TEX. LOC. GOV'T CODE §§ 43.035(b)(1); 212.172(b)(1) and (d).

- A promise by the owner not to use the property for any purpose other than for agriculture, wildlife management, and/or timber management, and related incidental activities. *Id*. § 212.172(b)(9).
- A promise by the owner that no person will file any type of subdivision plat or related development document for the property with any entity. *Id*. § 43.035(d).
- A provision that a violation of the agreement by the landowner by commencing development or by any other manner will constitute a petition for voluntary annexation in addition to other remedies available to the city, and that the owner waives any and all claims to a vested right of any kind. *Id*. § 212.172(b)(9).
- A provision authorizing the city to enforce all of the city's regulations and planning authority that do not interfere with the use of the property for agriculture, wildlife management, or timber, in the same manner that the regulations are enforced within the city's boundaries (or in a different manner, as authorized by Section 212.172). *Id*. § 212.172(b)(4); (b)(6); (b)(8).
- Recordation of the agreement in the real property records of the county, so that the agreement will run with the land. *Id*. § 212.172(f).
- Perhaps a provision providing that, upon the expiration of the agreement, the agreement constitutes a petition for annexation by the property owner (which is arguably authorized). *Id*. § 212.172(b)(7).

When drafting an agreement, city officials should consider the legislative intent behind the requirement to offer an agreement. The intent is to allow a landowner who truly intends to continue using his land for agriculture, wildlife management, or timber management to remain outside of a city's limits for a certain period of time. The provisions of a proffered agreement should reflect that intent. Drafting and offering a completely unreasonable agreement to an eligible landowner does not carry out the intent of the statute, and could lead legislators to seek more restrictive provisions in the future.

On the other hand, the purpose of the requirement is to protect farmers and ranchers, and not to allow unscrupulous developers to subvert municipal regulations. To that end, according to Section 43.035(d), a provision of a development agreement entered into under that section is void if the landowner files any type of subdivision plat or related development document for the area with a governmental entity that has jurisdiction over the area, regardless of how the area is appraised for ad valorem tax purposes. If a landowner tries to develop in violation of an agreement, the city can annex immediately.

There are several other issues relating to Section 43.035 that a city should be aware of:

- Contiguity: In most cases, a city may only annex an area that is contiguous to the current city limits. Section 43.035(c) provides that, for purposes of any law, including a municipal charter or ordinance, relating to municipal authority to annex an area adjacent to the city, an area adjacent or contiguous to an area that is the subject of a development agreement is considered adjacent or contiguous to the city. In other words, a city is not prohibited from annexing land beyond the area that is the subject of the agreement solely because that land is

not contiguous to the city limits, so long as the area touches the area that is subject to the development agreement. It is also reasonable to conclude that the area that is the subject of the agreement acts to expand the city's extraterritorial jurisdiction, but that expansion is not expressly provided for in the statute and has not been tested in court.

- Vesting: Section 43.035(e) provides that a development agreement under that provision is not a permit for purposes of the "vesting statute," Chapter 245 of the Local Government Code.

Many cities have entered into agreements with landowners. Examples of those agreements are available on the Texas Municipal League's Web site at www.tml.org by clicking on "Legal," then "Land Use and Building Regulations." Those cities have expressed concern with some of the statute's provisions, but no legislative changes have been enacted since 2007. In any case, each city should consult with local legal counsel regarding the appropriate terms of its agreement.

B. Requirement that Area be in the City's ETJ

In addition to regulating annexation authority and procedures, the Municipal Annexation Act created the concept of extraterritorial jurisdiction (ETJ) in 1963. An area to be annexed must be within the city's ETJ under Section 43.051. In addition, under §§42.022 and 43.051, the area to be annexed cannot be located within the ETJ of another city. The policy purpose underlying ETJ is described in Section 42.001 of the Texas Local Government Code:

> The legislature declares it the policy of the state to designate certain areas as the extraterritorial jurisdiction of municipalities to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.

ETJ is defined as "the unincorporated area that is contiguous to the corporate boundaries of the municipality."[15] The geographical extent of any city's ETJ is contingent upon the number of inhabitants of the city:

Number of Inhabitants	Extent of Extraterritorial Jurisdiction
Fewer than 5,000	One-half Mile
5,000–24,999	One Mile
25,000–49,999	Two Miles
50,000–99,999	Three and one-half Miles
100,000 and over	Five Miles[16]

[15] Tex. Local Gov't Code § 42.021.

Section 42.021 uses the phrase "number of inhabitants" rather than "population." That distinction is significant because of Chapter 311 of the Texas Government Code (the Code Construction Act). According to Section 311.005(3) of the Government Code, the term "population" in a state statute means "the population shown by the most recent federal decennial census." But the extent of a city's ETJ is based upon the number of "inhabitants." The attorney general's office concluded in Letter Opinion No. LO-94-033 (1994) that "a municipality may choose the method by which it will ascertain the boundaries of its extraterritorial jurisdiction." Thus, a city may by ordinance or resolution determine the number of inhabitants within its corporate limits, and that determination if reasonable will define the extent of its ETJ. [17]

C. Authority to Annex Unilaterally

1. Charter Provisions (Home Rule Cities)

Most home rule charters in Texas, read in conjunction with Chapter 43 of the Local Government Code, provide for unilateral (non-consensual) annexation by home rule cities. Unilateral annexation authority is not necessarily uniform in all charters, and procedures prescribed in the charters may also vary. Whatever the procedures may be in a particular charter, they must be strictly followed, except when the procedures

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[16] *Id*. at § 42.021.

[17] *State ex rel. Rose v. City of La Porte,* 386 S.W.2d 782, 785 (Tex.1965); *City of Burleson v. Bartula*, 110 S.W.3d 561 (Tex.App.—Waco 2003, no pet.). A more recent case is also instructive. In *City of Granite Shoals v. Winder*, 280 S.W.3d 550 (Tex.App.—Austin, 2009), the general law city of Granite Shoals annexed two islands on Lake LBJ. The islands consisted of a handful of high-value homes and were annexed pursuant to Local Government Code Section 43.033. That section allows unilateral annexation by a general law city if certain elements are met. Another provision in Section 43.033 allows a majority of property owners in the annexed area to petition for disannexation, and the island property owners took advantage of that provision and were disannexed. In the meantime, the voters of the city adopted a home rule charter. The city then re-annexed the islands pursuant to its home rule authority. The property owners then filed for a declaratory judgment that, among many other things, the city did not have 5,000 inhabitants and was thus not eligible for home rule status, and that the city acted in bad faith in making the determination of the number of inhabitants. The city answered, arguing lack of subject matter jurisdiction and standing issues. The city argued that the court lacked subject matter jurisdiction because the only way to challenge the election was pursuant to an election contest. The city further argued that the only way to challenge the "bad faith" aspect of conversion to home rule is by a quo warranto suit. Citing incongruent precedent relating to previous election law provisions, the court concluded that the challenge regarding the number of inhabitants falls outside of the scope of the current election contest provision (and is thus not an "election contest"). The court held that the property owners could continue their declaratory judgment action. With regard to the city's *quo warranto* argument, the court held that the city's determination of inhabitants could be set aside upon a showing of bad faith. If the property owners can show that the determination was made in bad faith, the conversion to home rule becomes void ab initio, which allows a collateral attack on the conversion. Because the property owners raised more than a scintilla of evidence that the city acted in bad faith, the court examined the methods by which the city made the determination of inhabitants. City witnesses testified that they counted the number of utility connections and multiplied by 3. The city did not use demographics or census data to determine that multiplier. Those facts were enough to establish the possibility of bad faith. The court affirmed the denial of the trial court's plea to the jurisdiction.

conflict with state law, in which case the state law governs. If the procedures can be reconciled, then both must be followed.[18] Section 43.021 of the Texas Local Government Code provides the general authority for a home rule city to annex area. That section states that:

> A home-rule municipality may take the following actions according to rules as may be provided by the charter of the municipality and not inconsistent with the procedural rules prescribed by this chapter:
>
> (1) fix the boundaries of the municipality;
> (2) extend the boundaries of the municipality and annex area adjacent to the municipality[19]; and
> (3) exchange area with other municipalities.

2. Local Government Code Provisions (General Law Cities)

Chapter 43 provides the statutory authority for general law cities to annex. Section 43.033 of the Texas Local Government Code[20] is **the only major exception** (see section D.3. for other minor exceptions) to the rule that general law cities may only annex by petition (with consent). That section allows for unilateral annexation and states that:

> (a) A general-law municipality may annex adjacent territory without the consent of any of the residents or voters of the area and without the consent of any of the owners of land in the area provided that the following conditions are met:
>
> (1) the municipality has a population of 1,000 or more and is not eligible to adopt a home-rule charter;
> (2) the procedural rules prescribed by this chapter are met;

[18] Particular attention should be paid to §43.022 of the Local Government Code, which expressly requires voter approval of annexation in certain circumstances and additional notice requirements in some charters.

[19] This provision requires the area proposed for annexation to lie adjacent to the city. "Adjacent" means "contiguous." *State ex rel. Pan American Production Co. v. Texas City*, 303 S.W.2d 780, 786 (Tex. 1957)(holding that "the usual meaning of the word 'adjacent' must be applied to the words of the statute and that the Legislature used the term in the sense of being 'contiguous' and 'in the neighborhood of or in the vicinity of,' without reference to the character of the land or the use to which it is put"). *See also City of Irving v. Dallas Flood Control District,* 383 S.W.2d 571 (Tex. 1964)(citing many cases that were mostly decided before the provisions prohibiting strip annexations were enacted). At any rate, most would agree that a city may not annex "islands" that are not attached in any way to the city itself without the specific statutory authority to do so. *City of Willow Park v. Bryant*, 763 S.W.2d 506 (Tex. App. Fort Worth 1988, no writ); *But C.f.* Tex. Loc. Gov't Code § 42.0225 (providing that the annexation of an area that is not contiguous to a city does not expand the city's extraterritorial jurisdiction around that area) and Op. Tex. Att'y Gen No. GA-0014 (concluding that a city's ETJ does not expand when it annexes an "island", but not addressing the authority to do so).

[20] Note that Section 43.033 was modified by H.B. 1772 during the 2005 regular session to require a development agreement offer (see also Section 43.055, added by H.B. 1472 in 2007).

(3) the municipality must be providing the area with water or sewer service;

(4) the area:

(A) does not include unoccupied territory in excess of one acre for each service address for water and sewer service; or

(B) is entirely surrounded by the municipality and the municipality is a Type A general-law municipality;

(5) the service plan requires that police and fire protection at a level consistent with protection provided within the municipality must be provided to the area within 10 days after the effective date of the annexation;

(6) the municipality and the affected landowners have not entered an agreement to not annex the area for a certain time period; and

(7) if the area is appraised for ad valorem tax purposes as land for agricultural or wildlife management use under Subchapter C or D, Chapter 23, Tax Code:

(A) the municipality offers to make a development agreement with the landowner in the manner provided by Section 212.172 that would:

(i) guarantee the continuation of the extraterritorial status of the area; and

(ii) authorize the enforcement of all regulations and planning authority of the municipality that do not interfere with the agricultural or wildlife management use of the area; and

(B) the landowner fails to accept an offer described by Paragraph (A) within 30 days after the date the offer is made.

(b) If, after one year but before three years from the passage of an ordinance annexing an area under this section, a majority of the landowners or registered voters in the area vote by petition submitted to the municipality for disannexation, the municipality shall immediately disannex the area. If the municipality disannexes the area under this subsection, the municipality may discontinue providing the area with water and sewer service.

D. Other Annexation Authority

1. Annexation by Petition of Area Voters (General Law Cities)

Section 43.024 of the Local Government Code authorizes a type A general law city to annex an area if the majority of the qualified voters of the area vote in favor of becoming part of the city. *Id*. at §43.024(b). The approval of the majority of voters may be shown by any three of those voters preparing an affidavit to the fact of the vote and filing the affidavit with the mayor of the city. *Id.* The vote is not required to be done by ballot or at any type of formal election. The voter's intentions may be expressed by any method

that is satisfactory to themselves and the city council.[21] Upon receipt of the affidavit, the mayor must certify the filed affidavit to the city council. The city council then may, after all of the procedural requirements of Chapter 43 are met, annex the area by ordinance. *Id*. at §43.024(c). This section only allows the annexation of an area that is one-half mile or less in width and is contiguous to the city limits. *Id*. at §43.024(a).

Section 43.025 authorizes a type B general law city to annex an area if a majority of the qualified voters of an area contiguous to the city vote in favor of becoming a part of the city. *Id*. at §43.025(a). Any three of those voters may prepare an affidavit to the fact of the vote and file the affidavit with the mayor of the city. *Id*. The vote is not required to be done by ballot or at any type of formal election. The voter's intentions may be expressed by any method that is satisfactory to themselves and the city council.[22] The mayor must certify the filed affidavit to the governing body of the city. On receipt of the certified affidavit, and after the procedural requirements of Chapter 43 have been met, the governing body by ordinance may annex the area. A type B city may not be enlarged under §43.025 to exceed the area requirements established by §5.901, which sets square mileage requirements at the time of incorporation for cities of different populations - for a city with less than 2,000 inhabitants, the area limitation is two square miles.[23]

2. Annexation by Petition of Area Landowners (Any City)

[21] *Universal City v. City of Selma,* 514 S.W.2d 64, 72 (Tex. App.--Waco 1974, writ ref'd n.r.e.). *See also State v. City of Waxahachie*, 17 S.W. 348, 349-350 (Tex. 1891)(holding that lack of notice to some voters in the area does not render annexation void). In addition, *Village of Salado v. Lone Star Storage Trailer, II Ltd*., Not Reported in S.W.3d, 2009 WL 961570 (Tex.App.—Austin,2009) is a case that confirms the broad authority of resident voters to draw the area for annexation. In that case, the Village of Salado annexed property along its eastern boundary, including property owned by Lone Star, pursuant to the voluntary annexation provision of Section 43.025 of the Local Government Code. In this annexation, the area had multiple qualified voters, but Lone Star's property was the only property that was actually contiguous to the city. After the annexation, Lone Star filed a declaratory judgment action asking the court to declare the annexation void. The village and Lone Star filed competing motions for summary judgment, and the district court granted Lone Star's motion, declaring the annexation void. The village appealed. Lone Star argued that Section 43.025 requires that Lone Star consent to the annexation because Lone Star is the only "contiguous" landowner. Lone Star argued that non-contiguous voters cannot consent to an annexation, even if their property is part of a larger total area to be annexed. The village argued that the annexation was proper because the requirements of Section 43.025 were followed. The court of appeals held that Section 43.025 does not distinguish between "voters" who are on the border of the city and those who are not. The statute does not require unanimous consent and also does not provide an exception for cases where one landowner owns all of the contiguous property and does not consent. The court of appeals held that the entire area is used to determine whether the area is contiguous, not just one tract. The court of appeals reversed the district court's judgment and rendered judgment that the annexation was valid and enforceable.

[22] *Id.*

[23] *See City of Northlake v. East Justin Joint Venture*, 873 S.W.2d 413 (Tex. App.--Fort Worth 1994, writ denied). The *Northlake* case held that the size limitation for type B cities was equally applicable to type A cities, but the Texas Supreme Court limited this holding to type B cities in *Laidlaw Waste Systems v. City of Wilmer*, 904 S.W.2d 656 (Tex. 1995).

Local Government Code §43.028 authorizes any city to annex a sparsely occupied area on petition of the area's landowners.[24]

Section 43.028[25] applies only to the annexation of an area:

1) that is one-half mile or less in width;[26]
2) that is contiguous (abuts or touches) to the annexing municipality; and
3) that is vacant and without residents or on which fewer than three qualified voters reside.

While a home rule city may utilize Section 43.028, most attorneys agree that Section 43.021 (general home rule authority to annex in accordance with charter) grants a home rule city the authority to annex by petition pursuant to its charter. (The significance of the distinction is that a home rule charter-based petition annexation wouldn't include the additional procedural requirements in Section 43.028(d) as addressed in footnote 25 below.)

3. Miscellaneous Provisions

Other examples of provisions that provide annexation authority include, but are not limited to: §43.026 (Type A city may annex area it owns), §43.027 (General law city may annex adjacent navigable stream), §43.032 (Certain general law cities may annex certain areas that are surrounded by the city); §43.101 (General law city may annex municipally-owned reservoir that supplies water to the city), §43.102 (City may annex municipally-owned airport and right-of-way leading to airport), §43.023 (General law city over 5,000 population may annex on petition and election), and §43.103 (General law city may annex adjacent road[27]).

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[24] *Underground Water Conserv. Dist. v. Pruit*, 915 S.W.2d 577, 583 (Tex.App.-El Paso 1996, no writ) concluded that, at least for purposes of Water Code annexation provisions relating to the district, surface owners' petitions had the effect of annexing into a special district only so much of the surface and mineral estates as the petitioner owned and no more.

[25] Note that §43.028(d) states that "after the 5th day but on or before the 30th day after the date the petition is filed, the governing body shall hear the petition and the arguments for and against the annexation and shall grant or refuse the petition as the governing body considers appropriate." The hearing and acceptance of the petition must be completed within the 25 day time period, and prior to conducting the other procedural requirements (e.g., service plan, notice, and hearings) of Chapter 43. *Town of Fairview v. Stover*, 2002 WL 1981371 (Tex.App.--Dallas 2002)(Unpublished opinion). Also, the petitioner arguably has the right to withdraw the petition up to the adoption of the annexation ordinance. *Karm v. City of Castroville*, 219 S.W.3d 61 (Tex.App.-San Antonio 2006)

[26] The area to be annexed must be within the city's ETJ. See Local Government Code §42.021 for extent of ETJ for cities of different sizes. In addition, under §§42.022 and 43.051, the area to be annexed cannot be located within the ETJ of another city.

[27] TEX. LOC. GOV'T CODE §43.106 requires a city that proposed to annex any portion of a paved county road to also annex the entire width of the county road and the adjacent right-of-way.

VI. PROCEDURES FOR AREAS EXEMPT FROM THE ANNEXATION PLAN REQUIREMENT

A. Introduction

Section 17 of S.B. 89, which is codified as statutory notes that follow various sections of Chapter 43 of the Local Government Code, provides that most of the changes made by the bill apply only to an annexation included in a city's annexation plan. A city was authorized to annex any nonexempt area that was not included in its plan until December 31, 2002, under the former law. TEX. LOC. GOV'T CODE §43.052, *Statutory note (c).* These so-called "old law" annexations are no longer authorized, as the grandfathering period has expired. Thus, annexations are now either under a plan (Subchapter C procedures) or exempt from a plan (Subchapter C-1 procedures).

B. Annexation of Area Exempt from the Annexation Plan Requirement

1. 100 Tracts Exemption and Other Exemptions

The most common exemption from the annexation plan requirement is[28]:

> [T]he area contains fewer than 100 separate tracts of land on which one or more residential dwellings are located on each tract.

TEX. LOC. GOV'T CODE §43.052(h)(1). City attorneys have interpreted the provision to mean that an area is exempt if it contains any number of tracts so long as no more than 99 of the tracts contain residential dwellings. The changes made to §43.052(h)(1) were made after the committee hearings on S.B. 89 were held and there is no testimony regarding the provision, but a 2009 attorney general opinion – GA-0737 – confirmed that interpretation.[29] S.B. 89 was enacted to curb perceived abuses of unilateral annexation authority by a few cities, and is designed to prevent cities from annexing very large residential subdivisions without providing adequate notice. At any rate, the decision is up to the city council in the first instance, subject to the arbitration provisions of Section 43.052(i)[30] or a *quo warranto* proceeding.[31]

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[28] §43.052(h) contains several other examples, but this provision seems to be the most commonly used in home rule unilateral annexations.

[29] "*While the statute would benefit from legislative clarification, we conclude that section 43.052(h)(1) of the Local Government Code does not require that a residence be located on each tract of the area proposed for annexation. An annexation undertaken pursuant to section 43.052(h) is not void if the municipality fails to adopt a three-year annexation plan.*"

[30] In *Hughes v. City of Rockwall*, 153 S.W.3d 709 (Tex.App.-Dallas 2005, pet. filed February 23, 2005), the principal issue before the Court was whether Texas Local Government Code Section 43.052(i) is procedural or substantive in nature, and the Texas Supreme Court later said that the issue is procedural (No. 05-0126, January 25, 2008, *City of Rockwall v. Hughes*, 246 S.W.3d 621 (Tex.2008).). *See also JNC Partners Denton LLC v. City of Denton*, 190 S.W.3d 790, 792 (Tex.App.-Fort Worth 2006, pet. filed).

[31] *Werthmann v. City of Fort Worth*, 121 S.W.3d 803, 807 (Tex. App.--Fort Worth 2003)(holding that the requirements of Section 43.052 are procedural); *See also City of Balch Springs v. Lucas*, 101 S.W.3d 116 (Tex. App.--Dallas 2002).

Another common exemption occurs when the area will be annexed by petition of more than fifty percent of the real property owners in the area proposed for annexation or by vote or petition of the qualified voters or real property owners. *Id.* at §43.052(h)(2). In addition, §43.052(h) contains several other exemptions from the plan requirement. Examples include an area located in a colonia, an area owned by a type A general law city, or an area for which the city determines that the annexation of the area is necessary to protect the area proposed for annexation or the municipality from imminent destruction of property or injury to persons.

2. Applicable Provisions

Procedures for annexations that are exempt from the annexation plan requirement are now located in Chapter 43, Subchapter C-1, of the Local Government Code. However, §43.052, *Statutory note (e)* and §43.062 make the following provisions from Subchapter C applicable to exempt Subchapter C-1 annexations:

1. §43.002, *Continuation of Land Use*: prevents a city, with certain exceptions, from prohibiting a person from continuing to use land in the manner in which it was being used prior to annexation (cities can still impose regulations relating to: location of sexually oriented businesses, colonias, preventing imminent destruction of property or injury to persons, public nuisances, flood control, storage and use of hazardous substances, sale and use of fireworks, or discharge of firearms on most parcels). Made applicable by S.B. 89, Section 17(e).

2. §43.051, *Restricting annexations to the ETJ unless the city owns the property*. Made applicable by TEX. LOC. GOV'T CODE §43.062(a).

3. §43.054, *Width Requirements*: area must generally be at least 1,000 feet wide unless the boundaries of the city are contiguous to the area on at least two sides, with certain exceptions. Made applicable by S.B. 89, Section 17(e) & TEX. LOC. GOV'T CODE §43.062(a).

4. §43.0545, *Annexation of Certain Adjacent Areas.*[32] Made applicable by S.B. 89, Section 17(e) & TEX. LOC. GOV'T CODE §43.062(a).

5. §43.055, *Maximum Amount Per Year*: limiting the maximum amount of annexation each year to ten percent of the incorporated area of the

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[32] *City of Missouri City v. State ex rel. City of Alvin*, 123 S.W.3d 606, 616 (Tex. App.-Houston [14th dist.] 2003)(holding that §43.0545 prohibits the annexation of land that lies within a city's extraterritorial jurisdiction solely by virtue of the fact the land is "contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point."); §43.0546 also deals with annexation of certain adjacent areas, but that section applies only to the City of Houston.

municipality with certain exceptions. Made applicable by TEX. LOC. GOV'T CODE §43.062(a).[33]

6. §43.056(b)-(o), but not (d) or (h)-(k)[34], *Provision of Services to Annexed Area*: cities must provide full municipal services to annexed areas within 2 ½ years, unless certain services cannot be reasonably provided within that time and a city proposes a schedule to provide services within 4 ½ years. However, capital improvements must only be substantially completed within that 4 ½ year period. TEX. LOC. GOV'T CODE §43.056(b) & (e). "Full municipal services" means services provided by the annexing city within its full-purpose boundaries, including water and wastewater services and excluding gas or electrical service. *Id*. at §43.056(c). Also, a city is not required to provide a uniform level of services to each area of the city if different characteristics of topography, land use, and population density constitute a sufficient basis for providing different levels of service.[35] *Id*. at §43.056(m). Made applicable by S.B. 89, Section 17(e) & TEX. LOC. GOV'T CODE §43.065(b).

7. §43.0565, *Arbitration Regarding Enforcement of Service Plan*: allows person in area to request arbitration in writing, if arbitrator finds that the municipality has not complied with the service plan requirements, the city may disannex the area or the arbitrator may require the city to comply with service plan or refund money collected for those services that were not provided (Houston only - *See* §43.056(l)). Made applicable by S.B. 89, Section 17(e) & TEX. LOC. GOV'T CODE §43.062(a).

8. §43.0567, *Water or Sewer Service (City of Houston only).* Made applicable by TEX. LOC. GOV'T CODE §43.062(a).

9. §43.057, *Annexation That Surrounds an Area.* Made applicable by TEX. LOC. GOV'T CODE §43.062(a).

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[33] The maximum of ten percent per year may be carried over up to thirty percent if not used. TEX. LOC. GOV'T CODE §43.055(b), (c). In addition, certain types of annexations do not apply to the percentage requirement, including most petition-based annexations and annexation of an area owned by the city, county, state, or federal government and used for a public purpose. *Id*. at §43.055(a)(1), (2), (3), & (4).

[34] Section 43.065(b) provides that "[s]ections 43.056(b)-(o) apply to the annexation of an area to which this subchapter applies." However, Section 17(e) of S.B. 89 provides that neither (b) nor (h)-(k) apply. This conflict can largely be resolved by reviewing the relevant provisions of Section 43.056. Subsections (d) and (h) are Houston-only under current population – 1.5 million or more or 1.6 million or more, respectively, so generally don't apply. Subsection (i) directs a city to prepare a revised service plan for an area if the annexed area is smaller than that originally proposed, and can easily be complied with. Subsections (j) and (k) are somewhat more troubling, and may not be able to be completely complied with. Why? Those sections reference negotiations and other procedures that are unique to plan annexations, and are probably made applicable due to a drafting error.

[35] Under *City of Heath v. King,* 665 S.W.2d 133, 136 (Tex App.--Dallas 1983, no writ), whether a city provides services substantially equivalent to those furnished other areas with similar characteristics involves two considerations: (1) are there two separate areas of the city with similar characteristics; and if so, (2) are services being furnished to one area disparate from those being furnished to the other?

10. §43.0712, *Invalidation of Annexation of Special District; Reimbursement of Developer*. Made applicable by S.B. 89, Section 17(e).

11. §43.121(a), *Authority of Populous Home-Rule Municipalities (More than 225,000) to Annex for Limited Purposes; Other Authority not Affected.* Made applicable by S.B. 89, Section 17(e).

12. §43.141(c), *Disannexation for Failure to Provide Service*: if an area is disannexed for failure to provide services, it may not be annexed again within 10 years after the date of the disannexation. Made applicable by S.B. 89, Section 17(e).

13. §43.148, *Refund of Taxes and Fees For Disannexed Area*. Made applicable by S.B. 89, Section 17(e).

14. §43.905, *Effect of Annexation on Operation of School District*: requires a city to give notice to any school district in the area to be annexed between the 20th and 11th day before the first public hearing. Made applicable by S.B. 89, Section 17(e).

15. §43.906, *Voting Rights After Annexation*: requires a city to apply for preclearance under Section 5 of the Voting Rights Act of 1965 from the United States Department of Justice on the earliest date permitted under federal law.[36] Made applicable by S.B. 89, Section 17(e).

3. Procedure

Prior to any other action, the city must determine whether an area is subject to the requirements of Section 43.035[37] – required offer of development agreement (see detailed discussion above) – and must comply with those requirements if so. To begin the annexation process, the city council must direct its planning department or other appropriate city department to prepare a service plan that details the specific municipal services that will be provided to the area after it has been annexed. *Id.* at 43.065(a).[38]

Before a city may institute annexation proceedings, the city council must give notice of, and conduct, two public hearings at which persons interested in the annexation are given an opportunity to be heard. *Id.* at §43.063(a). The city council must call the first public hearing on the proposed annexation and cause a copy of the notice of the hearing to be published. The notice of each hearing must be published in a newspaper of general circulation in the city and the area proposed for annexation at least once on

[36] See H.B. 1265 effective September 1, 2001.
[37] Or Section 43.033(a)(7) for general law cities annexing without consent.
[38] Under §43.065(b), it is important to remember that §§43.056(b)-(o), but not (d) or (h)-(k), also apply.

or after the 20th day, but before the 10th day before the date of each hearing.[39] *Id.* at 43.063(c). The newspaper should execute a notarized affidavit stating that the hearing notice was published. The city must also give written notice to any school district in the area at this time. *Id*. at §43.905[40]. This procedure is repeated for the second hearing. Nothing prohibits a city from expediting the process by publishing the notice of the hearings and/or holding the hearings close together (or perhaps even in one notice and as separate agenda items at the same meeting) so long as the appropriate timeframe is followed.

All persons attending the hearings must be given an opportunity to express their views regarding the proposed annexation and the service plan. The hearings must be conducted on or after the 40th day and before the 20th day before the date of the institution of the proceedings. *Id.* at §43.063(a).[41] The date of the "institution of proceedings" is the date the annexation ordinance is introduced on first reading. If a city requires only one reading (as in the case of a general law city that has not imposed the requirement of additional readings on itself), the proceedings are instituted and completed at the same time.

In addition, the annexation of an area must be completed within 90 days after the date the city council institutes the annexation proceedings or the proceedings are void. *Id.* at 43.064(a). The charters of some home rule cities require that an annexation ordinance must be introduced at one meeting before it can be passed at a subsequent meeting, or that the ordinance be read and voted on at two, sometimes three, separate meetings before finally being passed. Thus, the ordinance in a city requiring multiple readings must be finally passed within 90 days of the first reading.[42]

If the annexation is exempt by virtue of §43.052(h)(1)(100 tracts exemption), written notice must be sent before the 30th day before the date of the first hearing to each:

1) property owner in the area to be annexed;
2) public entity as defined in §43.053[43] or private entity that provides services in the area; and
3) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation.

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[39] When counting the ten day interval, do NOT include either the day the notice was published, nor the day of the hearing.

[40] The City MAY NOT ANNEX unless it has provided this notice: "The municipality may not proceed with the annexation unless the municipality provides the required notice."

[41] Note that a city is required to hold the two public hearings in the specified time frame. Nothing prohibits a city from holding more than two hearings, and so long as at least two of the hearings are within the prescribed time frame, the statutory requirements have been met. *Woodruff v. City of Laredo*, 686 S.W.2d 692, 696 (Tex. App. San Antonio 1985, writ ref'd n.r.e.).

[42] *Knapp v. City of El Paso*, 586 S.W.2d 216, 218 (Tex. App. - El Paso 1979, writ ref'd n.r.e.).

[43] "public entity" includes a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a special district, as that term is defined by §43.052. *Id.* at §43.053(a).

Id. at §43.062(b). All annexations under Subchapter C-1 require written notice by certified mail to each railroad company with right-of-way on the area proposed for annexation. *Id.* at §43.063(c).

In addition, the city must post notice of the hearings on the city's Web site, if the city has a Web site. *Id.* at §43.063(c).[44]

If a written protest is filed by more than ten percent of the adult residents of the area proposed for annexation within ten days after publication of notice, at least one of the public hearings must be held in the area proposed for annexation if a suitable site is reasonably available. *Id.* at §43.063(b).

Finally, the city council, acting at a meeting that is separate from the two required hearings, adopts an ordinance annexing the tract and approving the service plan for the tract. When the annexation ordinance is passed, a copy of the service plan is attached to the ordinance, and the plan becomes a contractual obligation of the city.

In sum, the sequence for annexation of an area exempt from an annexation plan could be as follows:

1) Determine applicability of Section 43.035 (or 43.033(a)(7)) and act accordingly;
2) preparation of the service plan;
3) provide written notice to property owners, railroads, and public and private entities if required;
4) city council calls two public hearings to be held at some time which is not less than 10, nor more than 20, days from the day of publication of the notice of the hearings;
5) notice of the hearings is published in a newspaper of general circulation in the city and the area to be annexed and on the city's Internet Web site, if the city has one, and written notice is sent to school districts in the area;
6) a 10 to 20 day interval between the publication and each of the hearings;
7) public hearings on the proposed annexation at which all interested persons are heard;
8) a 20 to 40 day interval between the hearings and the date that the annexation ordinance is passed;
9) city council meets and passes the annexation ordinance; and
10) proper post-annexation preclearance and notice is completed.

VII. UNILATERAL ANNEXATION OF AREA INCLUDED IN ANNEXATION PLAN

[44] The time requirements for posting are the same for the website, except the notice must remain on the site until the date of the hearing.

Procedures for annexations that are required to be in an annexation plan are located in Chapter 43, Subchapter C, of the Local Government Code. Prior to any other action, the city must determine whether an area is subject to the requirements of Section 43.035 – required offer of development agreement (see detailed discussion above), and must comply with those requirements if so.

A. Inventory

Section 43.053 requires a city to compile a comprehensive inventory of all services and facilities provided by public and private entities, directly or by contract, in each area proposed for annexation.[45] The purpose of the inventory is to determine the quality of existing services in the area. Some communities already have services that are superior to those provided in the annexing city, and the new law is designed to protect those communities from a reduction in the quality of services. The city must request the information necessary to compile the inventory in the notice required by §43.052(f) when an area is placed in an annexation plan, and the entity must provide the information not later than 90 days after the information is requested, unless the entity and the city agree to an extension. *Id.* at §43.053(c).

The information provided must include the type of service provided, the method of service delivery, and other information as provided by §43.053(e) & (f).[46] If a service provider fails to provide the information within the 90-day period, the city is not required to include the information in an inventory prepared under this section. The inventory is required only for areas that are included in an annexation plan.

B. Applicable Provisions

Other important requirements and restrictions include, but are not limited to:

1. §43.054, *Width Requirements*: generally area must be at least 1,000 feet wide unless the boundaries of the city are contiguous to the area on at least two sides.

2. §43.0545, *Annexation of Certain Adjacent Areas*[47]*.*

3. §43.0546, *Annexation of Certain Adjacent Areas by the City of Houston*.

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[45] A "public entity" includes a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a special district, as that term is defined by §43.052. *Id.* at §43.053(a).

[46] The information required in the inventory shall be based on the services and facilities provided during the year preceding the date the municipality adopted the annexation plan or amended the annexation plan to include additional areas. *Id*. at §43.053(d).

[47] *City of Missouri City v. State ex rel. City of Alvin*, 123 S.W.3d 606, 616 (Tex. App.-Houston [14th dist.] 2003)(holding that §43.0545 prohibits the annexation of land that lies within a city's extraterritorial jurisdiction solely by virtue of the fact the land is "contiguous to municipal territory that is less than 1,000 feet in width at its narrowest point.")**.**

4. §43.055, *Maximum Amount of Annexation Each Year*: with certain exceptions, a city may not annex a total area greater than ten percent of its existing incorporated area.

5. §43.056, *Provision of Services to Annexed Area*: cities must provide full municipal services to annexed areas within 2 ½ years, unless certain services cannot be reasonably provided within that time and a city proposes a schedule to provide services within 4 ½ years. However, capital improvements must only be substantially completed within that 4 ½ year period. TEX. LOC. GOV'T CODE §43.056(b). "Full municipal services" means services provided by the annexing municipality within its full-purpose boundaries, including water and wastewater services and excluding gas or electrical service. *Id*. at §43.056(c). Also, a city is not required to provide a uniform level of services to each area of the city if different characteristics of topography, land use, and population density constitute a sufficient basis for providing different levels of service. *Id*. at §43.056(m).

6. §43.0565, *Arbitration Regarding Enforcement of Service Plan*: allows person in area to request arbitration in writing, if arbitrator finds that the city has not complied with the service plan requirements, the city may disannex the area or the arbitrator may require the city to comply with service plan or refund money collected for those services that were not provided (Houston only - *See* §43.056(l)).

7. §43.0712, *Invalidation of Annexation of Special District; Reimbursement of Developer*.

8. §43.0751, *Strategic Partnerships for Continuation of Certain Districts*.

9. §43.121, *Authority of Populous Home-Rule Municipalities (More than 225,000) to Annex for Limited Purposes; Other Authority not Affected*.

10. §43.141, *Disannexation for Failure to Provide Service*: if an area is disannexed for failure to provide services, it may not be annexed again within 10 years after the date of the disannexation.

11. §43.148, *Refund of Taxes and Fees for Disannexed Area*.

12. §43.905, *Effect of Annexation on Operation of School District*: requires a city to give notice to any school district in the area to be annexed between the 20th and 11th day before the first public hearing.

13. §43.906, *Voting Rights After Annexation*: requires a city to apply for preclearance under Section 5 of the Voting Rights Act of 1965 from the

United States Department of Justice on the earliest date permitted under federal law.

C. Service Plan

After the inventory of services for the annexation plan has been prepared, and before the publication of notice of the first public hearing, the city council must direct its planning department or other appropriate municipal department to prepare a preliminary service plan that details the specific municipal services that will be provided to the area after it has been annexed. The final service plan must be completed before the tenth month after the inventory is prepared. *Id.* at 43.056(a).[48]

D. Procedure

During the three-year "waiting period," and prior to the adoption of the annexation ordinance after the expiration of the third year, a city must go through several procedural steps. A city must solicit information for, and compile, an inventory of services and prepare a service plan. *See Id. at* §43.056(a) & (j). Before a city may institute annexation proceedings, the city council must give notice of, and conduct, two public hearings at which persons interested in the annexation are given an opportunity to be heard. *Id.* at §43.0561(a). The city council must call the first public hearing on the proposed annexation and cause a copy of the notice of the hearing to be published. The notice of each hearing must be published in a newspaper of general circulation in the city and the area proposed for annexation at least once on or after the 20th day, but before the 10th day before the date of each hearing.[49] *Id.* at 43.0561(c). The newspaper should execute a notarized affidavit stating that the hearing notice was published. The city must also give written notice to any school district in the area at this time. *Id*. at §43.905[50]. This procedure is repeated for the second hearing. The hearings must be conducted before 90 days after the inventory is available for inspection. *Id.* at §43.0561(a).

Written notice must be sent by *certified mail* to each:

[48] While one part of the Chapter 43, §43.056(j) states that the service plan must be available at the public hearings, another part, §43.056(a) states that the service plan must be completed before the first day of the tenth month after the month in which the inventory is prepared. Thus, it appears that a city should prepare a "preliminary service plan" that is available at the public hearings, and then prepare a "final service plan" before the tenth month after the month in which the inventory is prepared.

[49] When counting the ten day interval, do NOT include either the day the notice was published, nor the day of the hearing.

[50] The City MAY NOT ANNEX unless it has provided this notice: "The municipality may not proceed with the annexation unless the municipality provides the required notice."

1. public entity as defined in §43.053[51], and utility services provider that provides service in the area, and
2. railroad that serves the city and is on the city's tax roll if the railroad has right-of-way in the area to be annexed.

Id. at §43.0561(c). In addition, the city must post notice of the hearings on the city's Web site, if the city has one. *Id.* at §43.0561(c).[52]

If a written protest is filed by more than twenty adult residents of the area proposed for annexation within ten days after publication of notice, at least one of the public hearings must be held in the area proposed for annexation or in the nearest suitable public facility outside of the area. *Id.* at §43.0561(b).

In sum, the sequence for annexation of an area included in an annexation plan could be as follows:

1) Determine applicability of Section 43.035 (or 43.033(a)(7)) and act accordingly;
2) place area in the plan and provide written notice to landowners, service providers, and railroads in the area. Request in the notice information from service providers for inventory;
3) compile and make available an inventory of services and service plan;
4) city council calls two public hearings to be held at some time which is not less than 10, nor more than 20 days from the day of publication of the notice of the hearings;
5) notice of the hearings is published in a newspaper of general circulation in the city and the area to be annexed and on the city's internet website, if the city has a website, and written notice is sent to school districts in the area, service providers, and railroads in the area;
6) a 10 to 20 day interval between the publication and each of the hearings;
7) public hearings on the proposed annexation at which all interested persons are heard;
8) hold negotiations with property owners for provision of services to area - see Section "E" below[53];
9) after expiration of three years, city council meets and passes the annexation ordinance including the final service plan within 30 days; and
10) proper post-annexation preclearance and notice is completed.

[51] A "public entity" includes a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a special district, as that term is defined by Section 43.052. *Id.* at §43.053(a).

[52] The time requirements for posting are the same for the website, except the notice must remain on the site until the date of the hearing.

[53] At this point, the process may come to a halt because the city may enter into contract in lieu of annexation with landowners and/or special districts. If neither a contract nor annexation is agreed upon, an arbitrator will be appointed to resolve the dispute. *Id.* at §43.0564. If the annexation is agreed upon, the process continues normally.

E. Negotiations/Arbitration

After a city other than the City of Houston completes the required hearings, the city must negotiate with the property owners or the board of any special district in the area concerning the service plan for provision of services after, or in lieu of, annexation. *Id.* at §43.0562. If the city is not annexing a special district, the commissioners court of the county where the area is located appoints five landowners to negotiate with the city. *Id.* at §43.0562(b). In addition, in lieu of annexation, a city is authorized to enter into a contract with the landowners for the provision of services, the funding of the services, the creation of any necessary special district, governing permissible land uses and compliance with municipal ordinances, and any other terms. *Id.* at §43.0563. If negotiations fail, an arbitrator will be appointed to resolve the dispute. *Id.* at §43.0564.[54] Only a handful of cities have conducted plan annexations, and even fewer have reached the arbitration stage. Of those that have, arbitrator decisions have generally been favorable to cities.[55] In one case, the landowner representatives sought excessive services from the city, and the arbitrator ended up deciding on a service plan that the city proposed at the very beginning of the process.

After the arbitrator's decision and the passage of the required waiting period, the city council adopts an ordinance annexing the tract and approving the final service plan for the tract. When the annexation ordinance is passed, a copy of the service plan is attached to the ordinance, and the plan becomes a contractual obligation of the city. Otherwise, the city and the landowners and/or special districts may enter into a contract for services in lieu of annexation.

VIII. OTHER MATTERS AFFECTING ALL ANNEXATIONS

Other annexation matters that must be addressed include obtaining preclearance from the United States Department of Justice and notifying the Texas Secretary of State, State comptroller, county clerk, telecommunications utilities, and others, and preparing an updated map of the city. Keep in mind that other entities may be notified, as appropriate, for each individual city.[56]

A. Preclearance

The Federal Voting Rights Act of 1965 codifies the Fifteenth Amendment's permanent guarantee that no person shall be denied the right to vote on account of race or color. Section 5 is a special provision of the Act that requires state and local governments in

[54] *See* §43.0564 for full details of arbitration and appeal, §43.0565 for details regarding arbitration concerning enforcement of service plan, and §43.0567 for provisions governing the City of Houston's provision of water and wastewater services.

[55] Both Austin and Midlothian have experienced favorable decisions.

[56] For example, a city may want to notify the Texas Department of Transportation to move the city limits sign on a state highway, and/or the Texas Commission on Fire Protection regarding insurance ratings for the newly-annexed area.

certain parts of the country to get federal approval, known as "preclearance," before implementing any changes in their voting procedures. *See* 42 U.S.C. §1973c. Under §5, a covered local government entity must demonstrate to federal authorities that a voting change does not have a racially discriminatory purpose. For example, a city's annexation of all-white neighborhoods, while simultaneously failing to annex African-American neighborhoods, may serve as evidence that the city is in violation of §5. *See, e.g., City of Pleasant Grove v. U.S.,* 479 U.S. 462 (1987). Any change affecting voting, even though it appears to be minor or indirect, must be approved through §5 preclearance.

Preclearance is obtained by submitting a voting change to the United States Attorney General.[57] Preclearance is given if the attorney general affirmatively indicates that he has no objection to the change or, after the expiration of 60 days, no objection to the submitted change has been made. The full requirements for preclearance are published in Part 51, Title 28, of the Code of Federal Regulations. Materials generally necessary to be included in an annexation submission are:

1) a letter or other written document which includes the name and title of the city official submitting the proposed annexation, together with the name and address of the city proposing the annexation;
2) a statement, and any necessary supporting materials, that demonstrate that the proposed annexation will not have the effect of abridging the right of any person to vote on account of race, color, or membership in a language minority group;
3) a copy of the ordinance embodying the proposed annexation, certified by the mayor or city secretary as a true copy;
4) the date of final approval of the proposed annexation;
5) a description of the different parts of the city that would be affected by the proposed annexation, and how they would be affected—this information must be sufficient to show the Department of Justice how the proposed annexation would affect the voting strength of minorities in the city;
6) a statement certifying that the proposed annexation is final, or an explanation of why the statement cannot be made;
7) a statement of the reasons for the proposed annexation;
8) a statement identifying any past or pending lawsuits relative to the proposed annexation; and
9) an indication of population changes or shifts that will occur as a result of the proposed annexation.

[57] §43.906 of the Local Government Code, entitled Voting Rights After Annexation, requires a city to apply for preclearance under Section 5 of the Voting Rights Act of 1965 from the United States Department of Justice on the earliest date permitted under federal law. Also, type A city officials should be aware of Section 22.022(c), which provides that "the governing body may not change the number of wards or boundaries of a ward during the three-month period preceding the date of a municipal election."

More information about preclearance is available from the Civil Rights Division of the United States Department of Justice (DOJ) at "www.usdoj.gov/crt.voting" or by calling 1-800-253-3931. In addition, the DOJ now accepts preclearance submissions electronically at http://wd.usdoj.gov/crt/voting/sec_5/evs/.

B. Secretary of State Notification

The Texas Secretary of State should be notified so that he may correctly certify the legal validity of the annexation to the United States Department of Census. The city should submit a copy of the ordinance annexing the territory and a statement that the annexation is not the subject of litigation. The Texas Secretary of State may be contacted at 512-463-5559 or at www.sos.state.tx.us, and the Census Bureau at www.census.gov.

C. Comptroller and Appraisal District Notification

Notice must also be provided to the Texas Comptroller's Office. This ensures that the city will receive any sales taxes generated in the newly annexed area. The city secretary must submit by certified mail a certified copy of the annexation ordinance and a map of the entire city that shows the change in boundaries, with the annexed portion clearly distinguished, resulting from the annexation. TEX. TAX CODE §321.102. The Sales Tax Division of the Comptroller's office may be reached at 800-252-5555 or www.window.state.tx.us.

Also, Texas Tax Code Section 6.07 provides that if "an existing taxing unit's boundaries are altered, the unit shall notify the appraisal office of the new boundaries within 30 days after the date…its boundaries are altered."

D. Filing with County Clerk

In addition, after the annexation ordinance is adopted, a certified copy of the ordinance should be filed in the office of the county clerk of the county in which the municipality is located. *See* TEX. LOC. GOV'T CODE §41.0015 (requiring certified copy of documents be filed within 30 days of preclearance).

E. Map of Municipal Boundaries and Extraterritorial Jurisdiction

Cities are required to prepare a map that shows the boundaries of the city and its extraterritorial jurisdiction (ETJ). A copy of the map must be kept in the office of the city secretary and the city engineer if the city has one.

When a city expands its ETJ by petition or annexes territory, the map must be immediately updated to include the annexed territory, including an annotation that

states: (1) the date of ordinance; (2) the number of the ordinance, if any; and (3) a reference to the minutes or ordinance records in which the ordinance is recorded in full. TEX. LOC. GOV'T CODE §41.001.

E-1. Right-of-Way Fees

Telecommunications: Chapter 283 of the Texas Local Government Code, enacted in 1999, significantly altered the procedures under which cities collect compensation from certificated telecommunications providers (CTPs) that use city rights-of-way. Under Chapter 283, payments to cities are no longer based on a percentage of gross receipts. Rather, CTPs pay cities quarterly based on the number of "access lines" located in the city. The access lines are multiplied by an access line fee that is calculated under the statute.

When a city annexes territory, the newly-included area may have access lines. However, neither Chapter 283 nor the rules adopted by the Texas Public Utility Commission (PUC) directly address this situation. In order for a city to be properly compensated for the inclusion of the access lines, the city should notify any CTPs that may be providing service in the current city limits that, if the CTP also has access lines in the newly-annexed area, it must begin compensating the city accordingly. In addition, if a city is aware of other CTPs that may be operating in the area, it should notify those as well. Finally, the city should also notify the PUC (www.puc.state.tx.us) so that the information can be posted on the PUC's website.

Electric: Electric franchise fees are provided for in Section 33.008 of the Texas Utilities Code. After annexing, a city should contact the electric provider in the area to determine whether adjustments to, or a new, franchise agreement is necessary.

Cable/Video: Cable and video providers pay fees pursuant to Chapter 66 of the Texas Utilities Code. Those providers, and the PUC, should be notified of an annexation to ensure proper reporting.

Gas/Water: Retail gas and water companies often pay franchise fees to cities, and should be notified as well.

F. Disannexation

1. Disannexation for Failure to Provide Services

Section 43.141 of the Local Government Code provides that, if a city fails or refuses to provide services or to cause services to be provided to an annexed area within the period specified by Section 43.056[58] and according to the service plan prepared for the

[58] Prior to S.B. 89, a city had to provide full municipal services to annexed areas within 4 ½ years. TEX. LOC. GOV'T CODE §43.056(b)(old law). Under current law, services must be provided with 2 ½ years,

area under that section, a majority of the qualified voters of the area[59] may petition[60] the governing body to disannex the area.[61]

If the governing body fails or refuses to disannex the area within 60 days after the date of the receipt of the petition, any of the petitioners may bring a cause of action in district court to request that the area be disannexed. TEX. LOC. GOV'T CODE §43.141(b). The district court must enter an order disannexing the area if the court finds that a valid petition was filed with the city and that the city failed to perform its obligations in accordance with the service plan or failed to perform in good faith.

The provisions of current law relating to disannexation are substantially the same as the prior law, with one important exception. Section 43.052, *Statutory notes (d) and (e)* make §43.141(c), which states that if the area is disannexed it may not be annexed again within 10 years[62] after the date of the disannexation, applicable to both plan and exempt annexations.

2. Home Rule Disannexation According to Charter

Under §43.142, a home rule city may disannex an area according to rules provided by its charter and not inconsistent with state law. The section is permissive, and does not mandate disannaxation in most cases. The case of *City of Hitchcock v. Longmire*, 572 S.W.2d 122 (Tex. App.—Houston [1st Dist.] 1978, writ ref'd n.r.e.) concluded that initiative and referendum under a home rule charter are not implicated by §43.142, and may not be used to disannex property from a city.[63]

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unless certain services cannot be reasonably provided within that time and a city proposes a schedule to provide services within 4 ½ years. *Id.* at §43.056(b).

[59] *Freeman v. Town of Flower Mound*, 173 S.W.3d 839 (Tex.App.-Fort Worth 2005) and *Smith v. City of Brownwood*, 161 S.W.3d 675, 680 (Tex.App.-Eastland 2005, no pet.) stand for the proposition that only a majority of voters within an *entire annexed area* may petition for disannexation.

[60] The petition for disannexation must: (1) be written; (2) request the disannexation; (3) be signed in ink or indelible pencil by the appropriate voters; (4) be signed by each voter as that person's name appears on the most recent official list of registered voters; (5) contain a note made by each voter stating the person's residence address and the precinct number and voter registration number that appear on the person's voter registration certificate; (6) describe the area to be disannexed and have a plat or other likeness of the area attached; and (7) be presented to the secretary of the municipality. Also, the signatures to the petition need not be appended to one paper. Before the petition is circulated among the voters, notice of the petition must be given by posting a copy of the petition for 10 days in three public places in the annexed area and by publishing a copy of the petition once in a newspaper of general circulation serving the area before the 15th day before the date the petition is first circulated. Proof of the posting and publication must be made by attaching to the petition presented to the secretary: (1) the sworn affidavit of any voter who signed the petition, stating the places and dates of the posting; and (2) the sworn affidavit of the publisher of the newspaper in which the notice was published, stating the name of the newspaper and the issue and date of publication. *Id.* at §§43.141(d), (e) & (f).

[61] Under *Alexander Oil co. v. City of Seguin*, 825 S.W.2d 434, 437 (Tex. 1991), disannexation is the only express remedy for failure to provide services under a plan. *C.f.*, §43.056(l)(writ of mandamus).

[62] Under the old law, the waiting period was 5 years.

[63] *See also Vara v. City of Houston*, 583 S.W.2d 935, 938 (Tex.Civ.App.1979, writ ref'd n.r.e.), appeal dism'd, 449 U.S. 807, 101 S.Ct. 54, 66 L.Ed.2d 11 (1980)("We conclude that articles 1175 and 970a have withdrawn the subject matter of this ordinance, disannexation, from the field in which the initiatory process

3. General Law Disannexation

According to §43.143 of the Local Government Code, a general law city may disannex populated areas by petition and election.

To initiate the process, at least 50 qualified voters of an area located in a city sign and present a petition describing the area by metes and bounds to the mayor. If the petition requests that the area no longer be part of the city, the mayor must order an election on the question to be held on the first uniform election date that occurs after the date on which the petition is filed and that affords enough time to hold the election in the manner required by law. TEX. LOC. GOV'T CODE §43.143(a).

If the vote is for disannexation, the mayor must declare that the area is no longer a part of the city and enter an order to that effect in the minutes or records of the governing body. However, the area may not be discontinued as part of the city if the discontinuation would result in the city having less area than one square mile or one mile in diameter around the center of the original boundaries. *Id*. at §43.143(b). If an area withdraws from a city, the area is not released from its pro rata share of city indebtedness at the time of the withdrawal.[64] *Id*. at §43.143(c).

Section 43.144 allows the disannexation of sparsely populated area by a general law city by ordinance upon a vote of the governing body if:

> (1) the area consists of at least 10 acres contiguous to the city; and
> (2) the area:
> (A) is uninhabited; or
> (B) contains fewer than one occupied residence or business structure for every two acres and fewer than three occupied residences or business structures on any one acre.

On adoption of the ordinance, the mayor enters in the minutes or records of the governing body an order discontinuing the area, and the area ceases to be a part of the city.

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is operative."); *Save Our Aquifer v. City of San Antonio*, 237 F.Supp.2d 721 (W.D.Tex. 2002)("[T]here is no right existing in people to repeal annexation ordinance through referendum process; power to fix boundary limits was given to Texas municipalities pursuant to state annexation laws."); *Ryan Services, Inc. v. Spenrath*, Not Reported in S.W.3d, 2008 WL 3971667 (Tex.App.—Corpus Christi 2008)(concluding after a long battle that referenda do not apply to annexations).

[64]In addition, the governing body shall continue to levy a property tax each year on the property in the area at the same rate that is levied on other property in the city until the taxes collected from the area equal its pro rata share of the indebtedness. Those taxes may be charged only with the cost of levying and collecting the taxes, and the taxes shall be applied exclusively to the payment of the pro rata share of the indebtedness. This subsection does not prevent the inhabitants of the area from paying in full at any time their pro rata share of the indebtedness.

If a requested or desired disannexation for a general law city does not fit within either of the above provisions, it is prohibited.

4. Refund of Taxes and Fees

Senate Bill 89 added another provision in 1999. According to §43.148, if an area is disannexed, the city must refund to the landowners the amount of money collected in property taxes and fees during the period that the area was a part of the city less the amount of money that the city spent for the direct benefit of the area during that period.

The city is required to proportionately refund the amount to the landowners according to a method to be developed by the city that identifies each landowner's approximate pro rata payment of the taxes and fees being refunded, and the money must be refunded not later than 180 days after the area is disannexed.

IX. MISCELLANEOUS ANNEXATION ISSUES

A. Extraterritorial Jurisdiction Expansion

Many medium-to-large home rule cities have several smaller cities on the outskirts of their extraterritorial jurisdiction (ETJ). The residents of the unincorporated areas on the outskirts of the home rule cities, fearing unilateral annexation, appear to have discovered an interesting method of preventing an annexation by the larger cities. Section 42.022(b) of the Local Government Code allows a citizen to petition a city to be included in the city's ETJ. There is no statutory limit to the size of an ETJ that is extended in this manner. A landowner simply petitions the smaller, general law, city to be a part of its ETJ and thus prohibits annexation by the larger city. This scenario has occurred in many locations. In one instance, a general law city with a population of less than 600 had an ETJ that extended up to twelve miles from the city limits and encompassed some 40,000 acres. (That expansion later fell apart because of contiguity issues.) Similarly, a small town Southwest of Fort Worth once told area residents that they can protect themselves from future annexations by a large neighboring city by petitioning to become part of the small town's ETJ. The mayor of the small town actually issued a cordial invitation in a newspaper article to landowners that they should petition to be part of the town's ETJ.

Another issue relating to ETJ expansion was decided by the Texas Supreme Court in *City of San Antonio v. City of Boerne*[65], the so-called "Boerne Wall" case. Residents in the unincorporated area between the two cities petitioned the City of Boerne to be included in Boerne's ETJ, thereby avoiding annexation by San Antonio. Because some of the parcels were not contiguous, the county commissioners court petitioned the City

[65] 111 S.W.3d 22 (Tex. 2003).

of Boerne to include county roads to serve as “links” between the properties. San Antonio disputed the authority of the commissioners court to petition for inclusion of the roads. The San Antonio Court of appeals held that county commissioners, as agents for state, have the power to petition for inclusion of county roads. San Antonio appealed the decision to the Texas Supreme Court, which accepted the case. The Supreme Court reversed the court of appeals and held that: (1) the legislature's grant to a commissioner’s court of general control over county roads does not include the power to petition a city to annex certain portions of a given county road, and (2) a county commissioners court is not entitled, as agent of the State, to petition a city for annexation.

B. Validation and Presumed Consent

Beginning in 1935 and until 1995, the Texas Legislature passed validation acts. These acts are intended to promote stability in the law and cure defects in areas such as incorporation and annexation. *See* TEX. REV. CIV. STAT., Articles 974d-974d-44. As originally written, many of the acts validated annexations in all ways, whether the problems were procedural (e.g., no notice or hearing) or substantive (e.g., lack of authority to annex). *See, e.g. City of Grand Prairie v. Turner,* 515 S.W.2d 19, 23 (holding that article 974d-13 (1974) validated an annexation that was void *ab initio*).

In 1999, the validation act took on a different form. Rather than pass a validation act each legislative session, the legislature enacted Local Government Code §51.003. Section 51.003 is more of a permanent statute of limitations than a validation act. The section provides that, after three years have passed with no challenge, a city act is presumed valid. However, under §51.003(b)(1), the section does not apply to an act that was void at the time it occurred. Thus, while §51.003 may be used to cure procedural defects in an annexation, it arguably may not be used as a defense to an annexation that is void *ab initio*. In addition, §51.003 will not act to cure “an incorporation or attempted incorporation of a municipality, or an annexation or attempted annexation of territory by a municipality, within the incorporated boundaries or extraterritorial jurisdiction of another municipality that occurred without the consent of the other municipality in violation of Chapter 42 or 43.”

Similarly, Local Government Code §43.901 states that an “ordinance defining boundaries of or annexing area to a municipality is conclusively presumed to have been adopted with the consent of all appropriate persons, except another municipality, if” two years have passed and the ordinance has not been challenged in court.

In the case of *City of Murphy v. City of Parker*, 932 S.W.2d 479 (Tex. 1996), the City of Parker annexed a tract of land on petition of area landowners in 1989. Part of the annexed tract was actually in the ETJ of the City of Murphy. The City of Murphy sued in 1993, challenging the annexation based on the fact that a city cannot annex into another city’s ETJ. Section 43.901, at that time, did not exclude cities from its reach. Thus, the court held for the City of Parker, stating that 43.901 served as a statute of

limitations that bound the City of Murphy to challenge within two years. The dissent reasoned that, because a city is prohibited from annexing into the ETJ of another city, the annexation was void *ab initio* ("from the beginning") and could not be cured by the passage of time. H.B. 1264, passed in 2001, removed cities from the "presumed consent" category of §43.901.

However, the *City of Murphy* case may still have legal significance. Because the court validated the annexation into the City of Murphy's ETJ, it was by definition also permitting the application of §43.901 to improper annexations outside of the City of Parker's own ETJ. Such annexations have traditionally been considered a fundamentally void annexation as opposed to one that is voidable. Thus, it may still be possible to cite *City of Murphy* for the proposition that improper annexations outside the annexing city's ETJ (though not within another city's ETJ) are valid after the passage of two years without legal challenge. In addition, §43.901 appears to be curative of any type of annexation that would be void or voidable solely based on lack of consent of the residents of an area.

C. Types of Annexation Challenges

There are four basic remedies for improper annexations in Texas: (1) *quo warranto* actions; (2) collateral attacks; (3) declaratory judgment; (3) petition for disannexation; and (4) writ of mandamus. A very basic discussion of each follows.

Quo warranto literally means "by what authority." The term is based on old English common law and is an action by the state where the state acts to protect itself and the good of the public generally through its chosen agents. In modern times in Texas, the local district or county attorney[66] is the agent of the state who decides whether or not to institute this type of suit, and has full control of the proceedings. BLACK'S LAW DICTIONARY 1256 (6th ed. 1990); *See also* TEX. CIV. PRAC. & REM. CODE §66.001. The basis for requiring quo warranto proceedings is that a judgment in favor of or against a municipal corporation affecting the public interest binds all citizens and taxpayers even though they were not parties to the suit. *Alexander Oil Co. v. City of Seguin,* 825 S.W.2d 434, 437 (Tex.1991). If a city has the authority to annex, but fails to follow the proper annexation procedures, the annexation ordinance is merely voidable, and the only manner of challenging the annexation is through a quo warranto proceeding. Only the state can challenge an annexation for procedural irregularities because such irregularities merely result in voidable ordinances.[67]

[66] The Texas Attorney General is also authorized to bring quo warranto actions on behalf of the state but never has in the context of city annexations.

[67] *May v. City of McKinney,* 479 S.W.2d 114, 120 (Tex. App.--Dallas 1972, writ ref'd n.r.e.); *City of Houston v. Harris County Eastex Oaks Water & Sewer Dist.,* 438 S.W.2d 941, 944 (Tex. App.--Houston [1st Dist.] 1969, writ ref'd n.r.e.); *City of Irving v. Callaway,* 363 S.W.2d 832, 834-35 (Tex. App.--Dallas 1962, writ ref'd n.r.e.); *Lefler v. City of Dallas,* 177 S.W.2d 231, 233-34 (Tex. App.--Dallas 1943, no writ); *Werthmann v. City of Fort Worth*, 121 S.W.3d 803, 807 (Tex. App.--Fort Worth 2003)(holding that the annexation plan requirement of Section 43.052 is procedural).

However, where an ordinance is claimed to be void, and not merely voidable, a direct or collateral attack, rather than quo warranto proceeding, is proper. *City of Willow Park v. Bryant,* 763 S.W.2d 506, 508 (Tex. App.--Forth Worth 1988, no writ)(holding annexation ordinance void). An annexation ordinance is void *ab initio* if the city had no authority to annex in the first place. This type of annexation can be attacked by a private party, but even if the municipal act is void, the private party must suffer some burden peculiar to himself to acquire standing to sue. *Alexander Oil Co.,* 825 S.W.2d at 438-39.[68] The Texas Supreme Court has ruled many times that annexation ordinances that contradict the express statutory limitations on a city's authority are void. *See, e.g., City of West Orange v. State ex rel. City of Orange,* 613 S.W.2d 236, 238 (Tex.1981) (finding ordinance invalid because it purported to annex land not adjacent to city); *City of Waco v. City of McGregor,* 523 S.W.2d 649, 652 (Tex.1975) (opining that ordinance was "void when it was passed" because it attempted to annex territory in contravention of statutory provision); *City of West Lake Hills v. State ex rel. City of Austin,* 466 S.W.2d 722, 729-30 (Tex.1971) (holding that ordinances attempting to annex noncontiguous and nonadjacent land in violation of statute were invalid); *Deacon v. City of Euless,* 405 S.W.2d 59, 64 (Tex.1966) (declaring attempted annexation of territory "null and void" because it exceeded statutory size limitations).

An action for declaratory judgment may also be brought by a private party to challenge an annexation that is void *ab initio*. *Laidlaw Waste Systems (Dallas) v. Wilmer,* 904 S.W.2d 656, 660-61 (Tex.1995); *See also City of Bridge City v. State ex rel. City of Port Arthur,* 792 S.W.2d 217 (Tex. App.--Beaumont 1990, writ denied).

Finally, prior to the passage of S.B. 89, a petition for disannexation under Local Government Code §43.141 was the sole remedy for residents who complain that a city is not providing services in accordance with an annexation plan. *See City of Wichita Falls v. Pearce*, 33 S.W.3d 415, 417 (Tex. App.—Fort Worth 2000, no pet.). Now, §43.056(l) provides that a writ of mandamus is also available.[69]

D. City's Motives for Annexation Irrelevant

Courts generally have no authority to judicially review the reasons a city annexes property.[70] Thus, the fact that a city annexes property solely for the purposes of raising tax revenue is immaterial to the validity of an annexation. Further, a property owner has

[68] See also *City of Port Isabel v. Pinnell*, 161 S.W.3d 233, 239-40 (Tex.App.-Corpus Christi 2005, no pet.) (It is true that a private citizen has standing to challenge a void annexation ordinance if the private citizen shows a special burden under the ordinance. And the showing of the potential imposition of a tax on the plaintiff has been held to satisfy the special burden requirement.); *Sunchase Capital Group, Inc. v. City of Crandall*, 69 S.W.3d 594 (Tex.App.-Tyler 2001).

[69] §43.056(l) also provides that residents annexed by the City of Houston may request arbitration.

[70] *State ex rel. Pan American Production Co. v. Texas City*, 303 S.W.2d 780, 782 (Tex. 1957).

no Fourteenth Amendment due process rights with respect to the location of city boundaries. Thus, a Constitutional challenge should not succeed.[71]

E. Area Receiving Longstanding Treatment as Part of a City

Under the authority of Local Government Code §41.003, the city council may adopt an ordinance to declare an area that is adjacent to the city and that meets the following requirements to be a part of the city:

> (1) the records of the city indicate that the area has been a part of the city for at least the preceding 20 years;
> (2) the city has provided municipal services, including police protection, to the area and has otherwise treated the area as a part of the city during the preceding 20 years;
> (3) there has not been a final judicial determination during the preceding 20 years that the area is outside the boundaries of the city; and
> (4) there is no pending lawsuit that challenges the inclusion of the area as part of the city.

The adoption of an ordinance creates an irrebuttable presumption that the area is a part of the city for all purposes retroactive to the date the area began receiving treatment as part of the city. The presumption may not be contested for any reason after the effective date of the ordinance. It is not an annexation, but is appropriate to be included here.

F. Agreement in Lieu of Annexation

House Bill 1197, which became effective in June 2003, adds a new Subchapter G to Chapter 212 of the Local Government Code. The bill allows a city council to enter into a written contract with an owner of land in the city's extraterritorial jurisdiction to: (1) guarantee the land's immunity from annexation for a period of up to 45 years; (2) extend certain aspects of the city's land use and environmental authority over the land; (3) authorize enforcement of land use regulations other than those that apply within the city; (4) provide for infrastructure for the land; and (5) provide for the annexation of the land as a whole or in parts and to provide for the terms of annexation, if annexation is agreed to by the parties. The bill also validates an agreement entered into prior to the effective date of the bill, so long as the agreement complies with the bill's requirements. This is the statute referred to by Local Government Code Sections 43.033 and 43.035, which require that an agreement be offered to certain agricultural property prior to annexing.)

[71] *State ex rel. Danner v. City of Watauga,* 676 S.W.2d 721 (Tex. App.--Fort Worth 1984, writ ref'd n.r.e.); *Superior Oil Co. v. City of Port Arthur,*628 S.W.2d 94 (Tex.App.-Beaumont 1981, writ ref'd n.r.e.), *appeal dism'd,* 459 U.S. 802, 103 S.Ct. 25, 74 L.Ed.2d 40 (1982).

G. Prior Uses

Newly-annexed territory may contain an existing use that was legal prior to annexation. Section 43.002 of the Local Government Code provides as follows:

> (a) A municipality may not, after annexing an area, prohibit a person from:
>
> > (1) continuing to use land in the area in the manner in which the land was being used on the date the annexation proceedings were instituted if the land use was legal at that time; or
> >
> > (2) beginning to use land in the area in the manner that was planned for the land before the 90th day before the effective date of the annexation if:
> >
> > > (A) one or more licenses, certificates, permits, approvals, or other forms of authorization by a governmental entity were required by law for the planned land use; and
> > >
> > > (B) a completed application for the initial authorization was filed with the governmental entity before the date the annexation proceedings were instituted.
>
> (b) For purposes of this section, a completed application is filed if the application includes all documents and other information designated as required by the governmental entity in a written notice to the applicant.
>
> (c) This section does not prohibit a municipality from imposing:
>
> > (1) a regulation relating to the location of sexually oriented businesses, as that term is defined by Section 243.002;
> >
> > (2) a municipal ordinance, regulation, or other requirement affecting colonias, as that term is defined by Section 2306.581, Government Code;
> >
> > (3) a regulation relating to preventing imminent destruction of property or injury to persons;
> >
> > (4) a regulation relating to public nuisances;
> >
> > (5) a regulation relating to flood control;
> >
> > (6) a regulation relating to the storage and use of hazardous substances; or

(7) a regulation relating to the sale and use of fireworks.

(d) A regulation relating to the discharge of firearms or other weapons is subject to the restrictions in Section 229.002.

In addition, Section 245.002(a) of the Local Government Code provides as follows:

(a) Each regulatory agency shall consider the approval, disapproval, or conditional approval of an application for a permit solely on the basis of any orders, regulations, ordinances, rules, expiration dates, or other properly adopted requirements in effect at the time:

(1) the original application for the permit is filed for review for any purpose, including review for administrative completeness; or

(2) a plan for development of real property or plat application is filed with a regulatory agency.

In 2005, Section 245.004(2), which lists exemptions to Chapter 245's applicability, was amended to specify that "property classification" is not excluded from Chapter 245. As such, each city should carefully consider the initial zoning of property upon annexation. After the initial zoning, future attempts to rezone the property could draw an argument from the owner that Chapter 245 prevents such a change.

Finally, Chapter 251 of the Texas Agriculture Code (commonly referred to as the "Ag Protection Act") prohibits a city from imposing certain regulations against an existing agricultural operation.

Each city should consult with local legal counsel regarding the ability to impose city regulations against existing uses in a newly-annexed area.

H. Special Districts/Water Supply Corporations

The annexation of an area that lies within the boundaries of certain types of special districts or water supply corporations may have a unique set of rules that apply, especially regarding provision of services. The rules that govern the annexation of special districts are generally located in Subchapter D of Chapter 43 of the Local Government Code. Any city that seeks to annex area that lies in a special district should pay special attention to those provisions. Rural water supply corporations may have certificated service areas that are protected from encroachment by federal law. Any city that seeks to annex either type of area should consult with local legal counsel regarding the pitfalls associated with that type of annexation.

X. Provision of Services

The provision of services to an annexed area is arguably the most contentious part of the annexation process. Coupled with the fact that there are relatively few reported cases on the issue, provision of services often leads to disagreements between a city and landowners or residents in an annexed area. Contrary to popular opinion, Senate Bill 89 (1999) was never designed to limit the ability of a city to annex. Rather, it was introduced, and ultimately passed, as a way to ensure that an annexed area received appropriate services after annexation. Section 43.056 of the Local Government Code governs provision of services. Certain sections apply only to annexation plan annexations, while certain apply only to exempt annexations. A brief review of the entire section follows.

Subsection (a)(plan annexations only) – time for completion of service plan: "Before the first day of the 10th month after the month in which the inventory is prepared as provided by Section 43.053, the municipality proposing the annexation shall complete a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality."

Section 43.056(j) states that the service plan must be available at the public hearings. But Subsection(a) states that the service plan must be completed before the first day of the tenth month after the month in which the inventory is prepared. Thus, it appears that a city should prepare a "preliminary service plan" that is available at the public hearings, and then prepare a "final service plan" before the tenth month after the month in which the inventory is prepared.

***Note**: the service plan requirement for exempt annexations is found in similarly-worded Section 43.065: "Before the publication of the notice of the first hearing required under Section 43.063, the governing body of the municipality proposing the annexation shall direct its planning department or other appropriate municipal department to prepare a service plan that provides for the extension of full municipal services to the area to be annexed. The municipality shall provide the services by any of the methods by which it extends the services to any other area of the municipality." In addition, S.B. 89, Section 17(e) and Local Government Code Section 43.065(b) provide that 43.056(b)-(o), but not (d) or (h)-(k)[72], apply to an exempt annexation.*

[72] Section 43.065(b) provides that "[s]ections 43.056(b)-(o) apply to the annexation of an area to which this subchapter applies." However, Section 17(e) of S.B. 89 provides that neither (d) nor (h)-(k) apply. This conflict can largely be resolved by reviewing the relevant provisions of Section 43.056. Subsections (d) and (h) are Houston-only under current population – 1.5 million or more or 1.6 million or more, respectively, so generally don't apply. Subsection (i) directs a city to prepare a revised service plan for an area if the annexed area is smaller than that originally proposed, and can easily be complied with. Subsections (j) and (k) are somewhat more troubling, and may not be able to be completely complied with. Why? Those sections reference negotiations and other procedures that are unique to plan annexations, and are probably applicable due to a drafting error.

Subsection (b)(all annexations)[73] – general requirement to provide services: A city must provide full municipal services to annexed areas within 2 ½ years, unless certain services cannot be reasonably provided within that time and a city proposes a schedule to provide services within 4 ½ years. However, capital improvements must only be substantially completed within that 4 ½ year period.[74]

If the city provides any of the following services within its corporate boundaries, it must provide them to the annexed area immediately:

(1) police protection;
(2) fire protection;
(3) emergency medical services;
(4) solid waste collection, except as provided by Subsection (o);
(5) operation and maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;
(6) operation and maintenance of roads and streets, including road and street lighting;
(7) operation and maintenance of parks, playgrounds, and swimming pools; and
(8) operation and maintenance of any other publicly owned facility, building, or service.

Subsection (c)(all annexations) – definition of full municipal services: "Full municipal services" means services provided by the annexing city within its full-purpose boundaries, including water and wastewater services and excluding gas or electrical service.[75]

Subsection (d)(plan annexations): Houston-only.

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[73] Section 2 of H.B. 610 (2007) report makes the following change to Texas Local Government Code Section 43.056(b): "The service plan, which must be completed in the period provided by Subsection (a) before the annexation, must include a program under which the municipality will provide full municipal services in the annexed area…." Section 2 provides that the service plan must "be completed in the period provided by Subsection (a) before the annexation". The problem is that Subsection (a) **only applies to the annexation of an area that is in a city's three-year annexation plan**. A drafter who is unfamiliar with S.B. 89 may not be aware of that fact because **it is not in the statute itself**. Rather, Section 17 of S.B. 89 (codified in statutory notes that follow Section 43.052 and others) provides a list of the Chapter 43 provisions that apply to an exempt annexation. Note that Section 43.056(b) applies, but **Section 43.056(a) does not**. As such, a reference in Subsection (b) to requirements in Subsection (a) cannot be applied to the annexation of an exempt area. A city must complete a service plan for an exempt annexation, but the requirement for that plan comes from a completely different section – 43.065(b): "**Sections 43.056(b)-(o) apply to the annexation of an area to which this subchapter applies."** Again, note that Subsection (a) does not apply to an exempt annexation. Further, Subsection (a) references a timeline for the inventory that must be completed ***for a plan annexation under Section 43.053.*** *Pursuant to S.B. 89, Section 17, Subsection (e)*, exempt annexations ***do not require an inventory.*** For the annexation of an area in a city's annexation plan, the new language simply confirms the proper timeline for preparing the service plan after the inventory of services is prepared. For the annexation of an area that is exempt from the annexation plan requirement, the new language does not affect the service plan provisions whatsoever. Nor does it make any provisions relating to the preparation of an inventory applicable, as those are made ***expressly inapplicable*** by Section 17 of S.B. 89.

[74] TEX. LOC. GOV'T CODE §43.056(b) & (e).

[75] *Id*. at §43.056(c).

Subsection (e)(all annexations) – method for completion of services: "The service plan must also include a program under which the municipality will initiate after the effective date of the annexation the acquisition or construction of capital improvements necessary for providing municipal services adequate to serve the area." This provision should be read in conjunction with the time periods in Subsection (b), and essentially provides that the city must have a plan for, and complete, capital improvements in a reasonable manner (and that improvements should proceed according to the city's capital improvements plan). It also provides that "The requirement that construction of capital improvements must be substantially completed within the period provided in the service plan does not apply to a development project or proposed development project within an annexed area if the annexation of the area was initiated by petition or request of the owners of land in the annexed area and the municipality and the landowners have subsequently agreed in writing that the development project within that area, because of its size or projected manner of development by the developer, is not reasonably expected to be completed within that period."

Subsection (f)(all annexations) – financing the services: Provides that a service plan may not:

(1) require the creation of another political subdivision;
(2) require a landowner in the area to fund the capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner; or
(3) provide services in the area in a manner that would have the effect of reducing by more than a negligible amount the level of fire and police protection and emergency medical services provided within the corporate boundaries of the municipality before annexation.

Subsection (g)(all annexations) – level of services: This subsection essentially provides that the level of services in an area may not be reduced after annexation, and that the area should receive the same level of services after annexation.

Subsection (h)(all annexations?): Houston-only.

Subsection (i)(all annexations?) – revision of service plan: Directs a city to prepare a revised service plan for an area if the annexed area is smaller than that originally proposed.

Subsection (j)(plan annexations?) – amendment of service plan: Provides that that the preliminary service plan must be made available for public inspection and explained to the inhabitants of the area at the public hearings held under Section 43.0561.[76] The plan may be amended through negotiation at the hearings, but the provision of any service may not be deleted.

[76] Note that this provision applies only to plan annexations, which leads to the conclusion that Subsection (j) does not apply to exempt annexations.

Subsection (k)(plan annexations?) – amendment of service plan: Provides that, on approval by the governing body, the service plan is a contractual obligation that is not subject to amendment or repeal except that if the governing body determines at the public hearings [for plan annexations] that changed conditions or subsequent occurrences make the service plan unworkable or obsolete, the governing body may amend the service plan to conform to the changed conditions or subsequent occurrences. Amendments require a hearing.

Subsection (l)(all annexations) – term of service plan: Provides that a service plan is valid for 10 years, and contains numerous Houston-only provisions as well.

Subsection (m)(all annexations) – level of services: A city is not required to provide a uniform level of services to each area of the city if different characteristics of topography, land use, and population density constitute a sufficient basis for providing different levels of service.[77] This provision also provides that a dispute over service levels is resolved pursuant to the procedure in Subsection (l), but those procedures only apply to the City of Houston.

Subsections (n) and (o)(all annexations) – solid waste: These provisions govern how a city provides garbage collection in the area.

XI. CONCLUSION

Is Annexation really that complicated? True to lawyer form, the answer is "it depends." For general law and home rule cities performing agreeable annexations by petition, the answer is probably "no." A city simply receives the petition, prepares a service plan, provides appropriate notice, conducts two hearings, adopts the ordinance, and completes the post-annexation notice to the appropriate agencies.

On the other hand, cities that annex large residential areas unilaterally have many issues to contend with, including negotiations and possible arbitration. For these cities, the answer to the above question is definitely "yes." Local counsel should always be consulted prior to annexing, and this premise is doubly true when a city is considering contentious, unilateral, annexations.

In any case, neither this paper, nor any other secondary source, should serve as legal advice or a substitute for becoming extremely familiar with Chapter 43 of the Local Government Code prior to annexing property. For more information on

[77] Under *City of Heath v. King,* 665 S.W.2d 133, 136 (Tex App.--Dallas 1983, no writ), whether a city provides services substantially equivalent to those furnished other areas with similar characteristics involves two considerations: (1) are there two separate areas of the city with similar characteristics; and if so, (2) are services being furnished to one area disparate from those being furnished to the other? According to *Rio Bravo Subdivision Property Owners Ass'n v. City of Brownsville*, 2010 WL 3921185: Nothing in the plain language of the statute indicates that a municipality must provide new or additional services to an annexed area. (In addition, *Rio Bravo* tacitly approves the fact that a city can't encroach on a certificated water provider's service area.)

annexation or any other municipal issue, please contact the Texas Municipal League Legal Department at 512-231-7400 or legal@tml.org.

XII. Example Documents

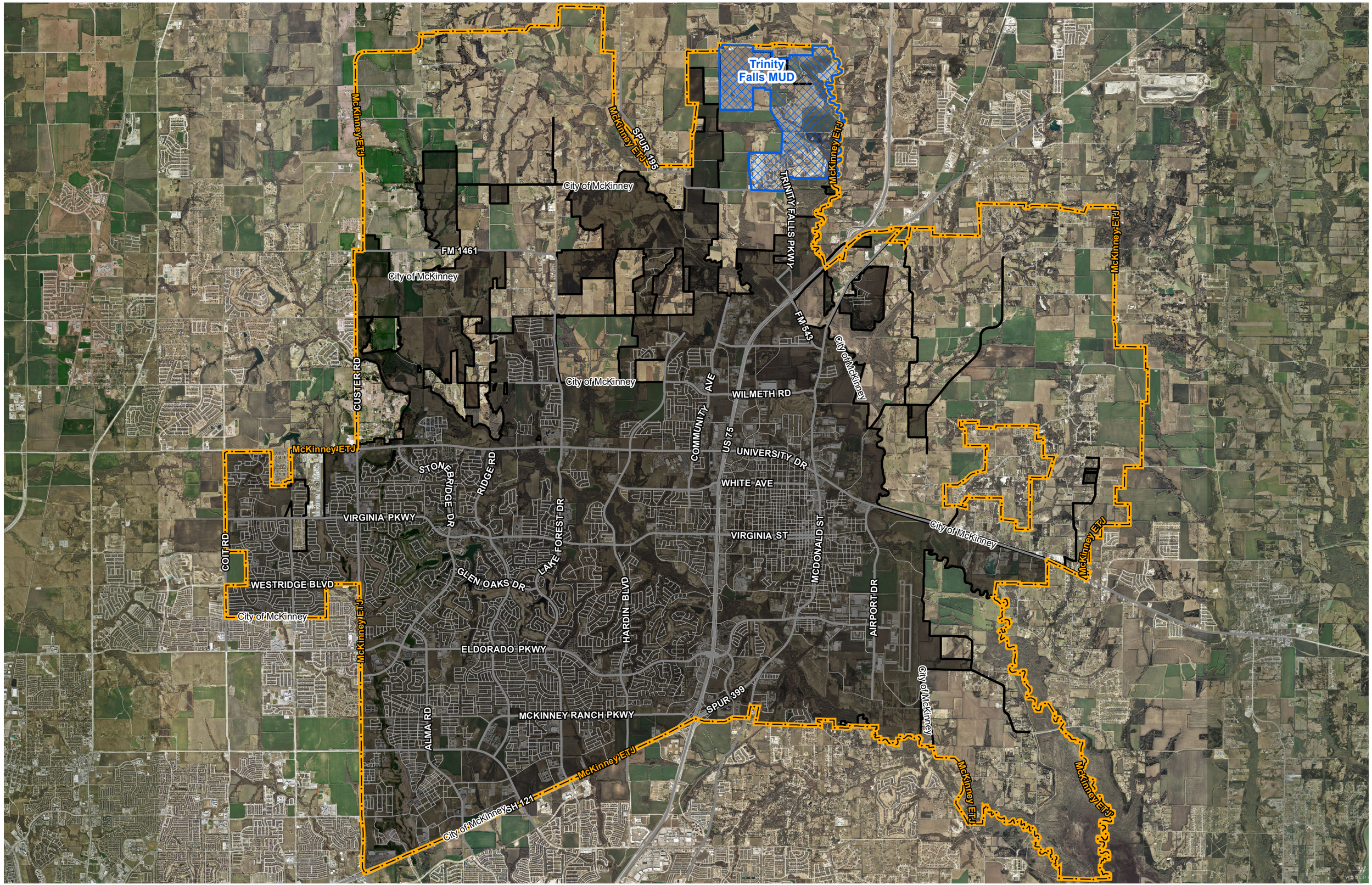
Examples of many of the necessary documents are available in Word format on the TML Web site. Go to www.tml.org, Legal, Land Use and Building Regulations, Example Documents, and finally Annexation Documents. Those documents are intended as examples only, and local counsel should always be consulted prior to use. Examples include:

- Ordinances, Resolutions, and Notices
- Calendars, including an Expedited Exempt Calendar
- Service Plan
- Annexation Plan for Exempt Annexations Only
- Petitions
- Development Agreement – Section 43.035

For excellent examples of three-year annexation plans, for forms and other documents used by specific cities, and for an example of comprehensive annexation Web pages, please visit:

- City of Denton (very cool): http://www.cityofdenton.com/index.aspx?page=1149
- City of Austin: http://www.ci.austin.tx.us/annexation/
- City of San Antonio: http://www.sanantonio.gov/planning/annexation_info.asp
- City of Midlothian: http://www.midlothian.tx.us/index.asp?NID=234

In addition, most cities' capital improvement plans and other documents are available on their Web sites.


Trinity Falls MUD
McKinney ETJ
SPUR 135
City of McKinney
TRINITY FALLS PKWY
FM 1461
City of McKinney
FM 543
City of McKinney
CUSTER RD
City of McKinney
COMMUNITY AVE
US 75
WILMETH RD
UNIVERSITY DR
WHITE AVE
STONE BRIDGE DR
RIDGE RD
VIRGINIA PKWY
LAKE FOREST DR
VIRGINIA ST
MCDONALD ST
City of McKinney
COIT RD
GLEN OAKS DR
HARDIN BLVD
AIRPORT DR
WESTRIDGE BLVD
City of McKinney
ELDORADO PKWY
ALMA RD
MCKINNEY RANCH PKWY
SPUR 399
City of McKinney
SH 121
City of McKinney

ORDINANCE NO. 99-11-88

AN ORDINANCE ADOPTING THE 1999 CITY OF McKINNEY ANNEXATION PLAN; PROVIDING FOR THE PUBLICATION OF THIS ORDINANCE AND PROVIDING FOR AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of McKinney, Texas, has adopted an updated Comprehensive Plan in 1990 to encourage and coordinate future physical development within its Ultimate Planning Area; and

WHEREAS, the City of McKinney recognizes that certain mechanisms are necessary to implement said 1990 Comprehensive Plan; and

WHEREAS, the Comprehensive Annexation Program is such a mechanism to aid in the implementation of the 1990 Comprehensive Plan; and

WHEREAS, the specific purposes of the Comprehensive Annexation Program are:

1. to comply with Chapter 43 of the Texas Local Government Code,
2. to aid in implementing the City of McKinney Comprehensive Plan,
3. to define and protect the ultimate boundaries of McKinney,
4. to insure responsible planning,
5. to encourage quality development in the future, and
6. to insure the continued attractive and efficient growth of the City, and

WHEREAS, the protection of the public health and general welfare of the people of the City of McKinney requires that such development be in an orderly manner and controlled by the City of McKinney, and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF McKINNEY, TEXAS:

Section 1. The attached 1999 Annexation Plan is hereby adopted pursuant to Chapter 43 of the Texas Local Government Code.

SEE ATTACHED EXHIBIT "A"

Section 2. If any section, subsection, paragraph, sentence, phrase or clause of this ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this ordinance which shall remain in full force and effect; and to this end the provisions of this ordinance are hereby declared to be severable.

Section 3. The caption of this ordinance shall be published one (1) time in a newspaper having general circulation in the City of McKinney, Texas, and shall be effective upon this publication.

Duly passed and approved by the City Council of the City of McKinney, Texas, on this 2nd day of November, 1999.

DON DOZIER, Mayor

Correctly Enrolled:

JENNIFER G. SPROULL, City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER, City Attorney

EXHIBIT A

City of McKinney
ANNEXATION PLAN
November 2, 1999
Prepared Pursuant To
Chapter 43 of the Texas Local Government Code

BACKGROUND AND INTRODUCTION

In the 1999 State of Texas Legislative Session, the State passed Senate Bill 89 which significantly changed the procedures for unilateral annexations initiated by home rule cities. The preparation, adoption and publication of this Annexation Plan is one of the major items that the State Legislature is now requiring of all municipalities.

An Annexation Plan is a document that outlines the following:

- Parcels of land being considered for annexation in the future
- Inventory of existing infrastructure in parcels being considered for annexation
- Inventory of property owners who own land in areas being considered for annexation
- Service Plan for water and sewer services to areas being considered for annexation
- Service Plan for safety services (police, fire, ambulance) for areas being considered for annexation
- Service Plan for other general services for areas being considered for annexation

In addition to the City of McKinney City Council officially adopting this Annexation Plan, the City Planning Division will publish the Annexation Plan and any related documents on its website and maintain that website for the general public. Any revisions, amendments, or other changes to the adopted Annexation Plan will also be published and maintained on the City's website. There are a variety of definitions and exemptions as part of SB 89 that should be available to all parties concerned with annexation. The City will maintain a copy of the revised Chapter 43 (which includes the SB 89 changes) on its website as well.

PURPOSE

The purpose of an Annexation Plan is to clearly articulate to elected and appointed city officials, city staff and the general public the current intent of the City of McKinney with respect to future unilateral annexations. The City of McKinney has a long history of comprehensive planning and responsible growth. This 1999 Annexation Plan is yet another tool toward that effort.

The 1999 Annexation Plan may be used as a guide to the City of McKinney with respect to the following:

- Growth Management
- Boundary Changes
- City Water and Sewer Services

- Safety Services (Police, Fire and Ambulance)
- City Roadway Services
- General Services

This Annexation Plan is intended to be a dynamic document that is flexible enough to allow the City to maintain a comprehensive approach to development and growth. This Annexation Plan takes into account the Future Land Use Plan of the City of McKinney which projects growth from the existing city limits to the ultimate planning area for the city (See Exhibit 1). As of its adoption date, the current city limits of the City of McKinney are approximately 58 square miles. The Ultimate Planning Area for the City of McKinney is approximately 114 square miles.

Annual Annexation Plans and amendments to prior plans will be prepared as State Law requires. The 1999 Annexation Plan governs any unilateral annexations beginning in the year 2002. The 2000 Annexation Plan will govern any potential unilateral annexations beginning in the year 2003, and so on.

FUTURE POSSIBLE ANNEXATIONS

At this time, the City of McKinney has no plans or intent to annex any property that is required by law to be included in the 1999 Annexation Plan.

SERVICE PLANS

Water & Sewer: Since the City of McKinney has no intent to annex any property that is required by law to be included in the 1999 Annexation Plan, no service plan has been developed which describes providing any water or sewer services outside the City Limits in conjunction with unilateral annexation.

Roadways: Since the City of McKinney has no intent to annex any property that is required by law to be included in the 1999 Annexation Plan, no service plan has been developed which describes providing additional roadway improvements outside the City Limits in conjunction with unilateral annexation.

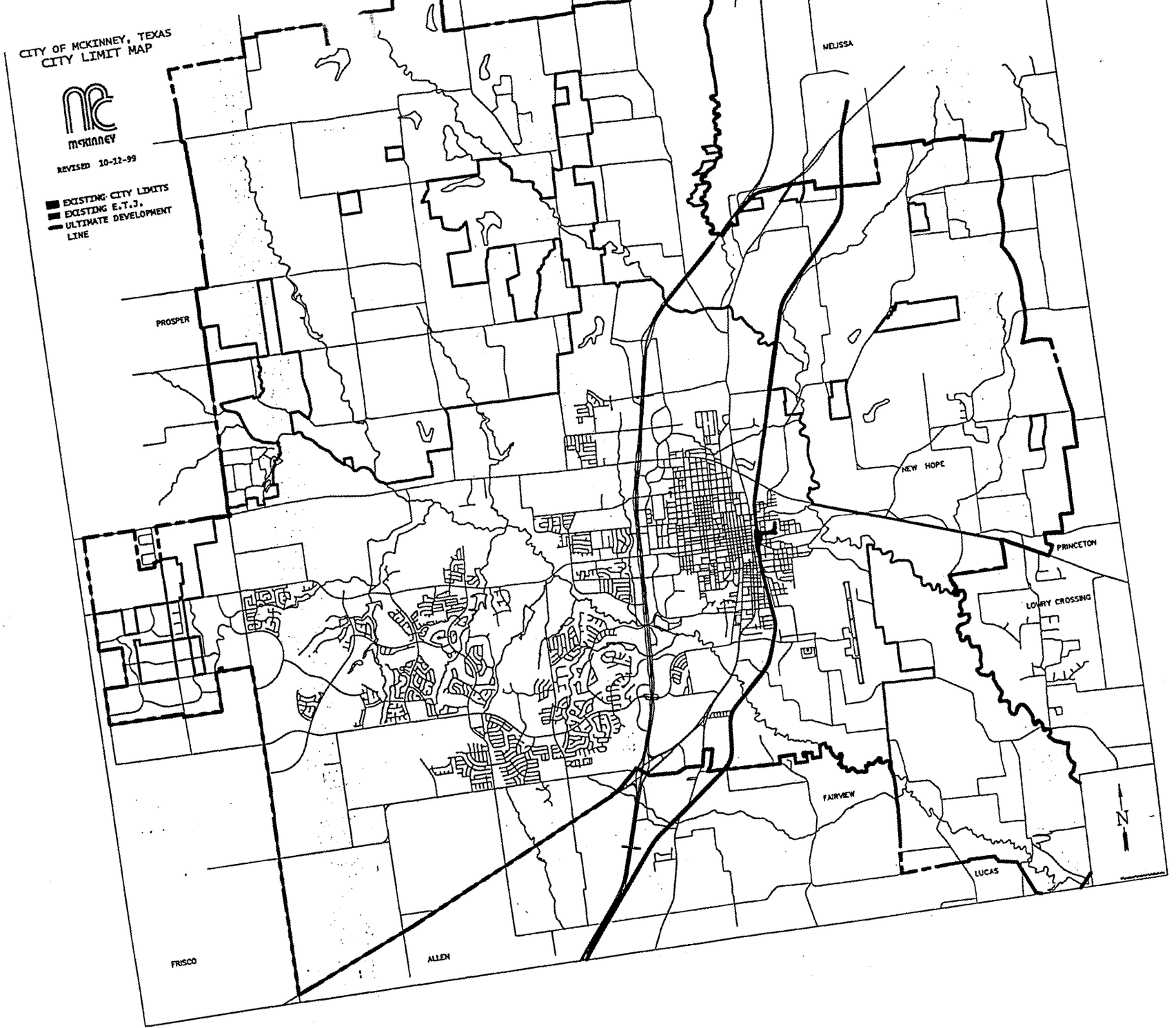
Safety Services: Since the City of McKinney has no intent to annex any property that is required by law to be included in the 1999 Annexation Plan, no service plan has been developed for providing any additional police, fire or 911 ambulance services outside the City Limits in conjunction with unilateral annexation. Currently, the City of McKinney Fire Department does provide fire and ambulance service to McKinney's entire ultimate planning area.

General Services: Since the City of McKinney has no intent to annex any property that is required by law to be included in the 1999 Annexation Plan,

no service plan has been developed which describes providing any general services outside the City Limits in conjunction with unilateral annexation.

FUTURE POSSIBLE ANNEXATIONS

The City of McKinney may annex certain properties where an exemption exists under state law to the requirement that the property be identified on an approved Annexation Plan.


CITY OF MCKINNEY, TEXAS
CITY LIMIT MAP
McKINNEY
REVISED 10-12-99
EXISTING CITY LIMITS
EXISTING E.T.J.
ULTIMATE DEVELOPMENT LINE
PROSPER
MELISSA
NEW HOPE
PRINCETON
LOWRY CROSSING
FAIRVIEW
LUCAS
FRISCO
ALLEN
N

Approach for Orderly Growth and Annexation Planning

November 16, 2015

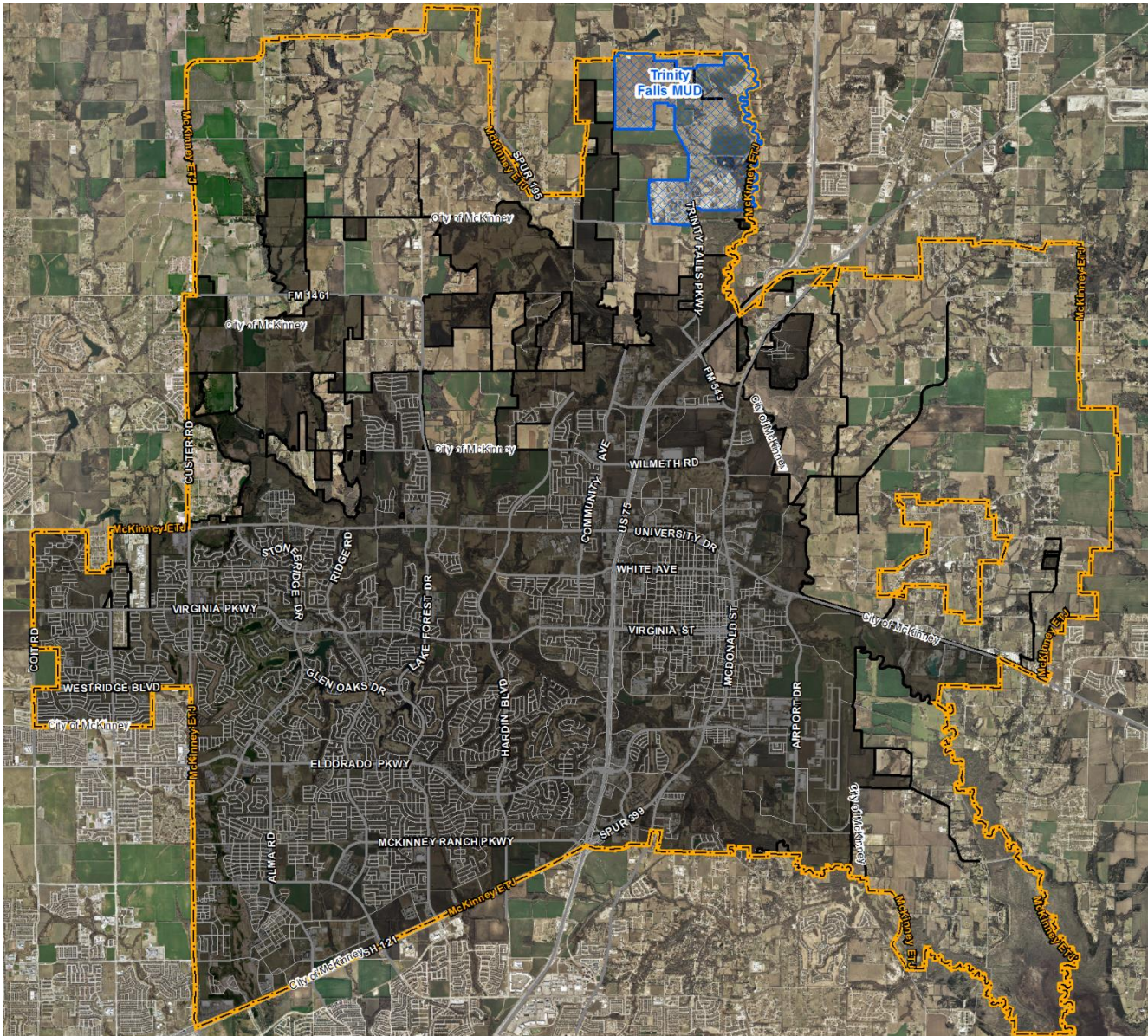
- MONEY MAGAZINE 2014 -

McKinney at a Glance

Current City Limits:
66.82 sq. mi.

Ultimate City Limits:
116 sq. mi.

43% of McKinney is currently unincorporated



Orderly Growth & Annexation Planning

Northwest Sector Study Initiative

Phase I of the Initiative created a vision for the Northwest Sector to guide the pattern of growth and desired development quality over the near, mid, and long term.

Phase II of the Initiative set out to evaluate, craft, select, relate, and phase the appropriate implementation components into a comprehensive implementation program or Action Plan, including:

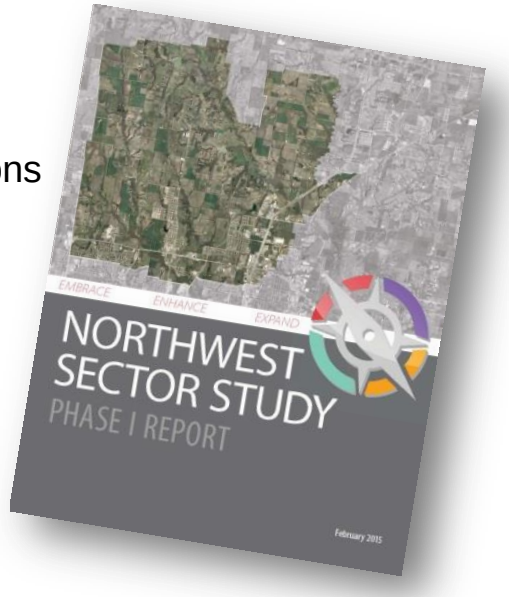
TASK 1. Market analysis and creation of locational criteria

TASK 2. Creation of a local street typology strategy/policy

TASK 3. Approach for orderly growth & annexation strategies

TASK 4. Analysis of, and proposed amendments to, development regulations

TASK 5. The creation of an infrastructure financing policy



Annexation Process and Background

- The annexation of land into a municipality's corporate limits is authorized and governed by Chapter 43 of the Texas Local Government Code.

- There are generally 3 ways that annexations can occur:

1. Annexations by Petition (Voluntary)

A private property owner (or owners) may request to be annexed into a City's corporate limits. Historically speaking, the majority of land annexed in McKinney over the last 10 years has been voluntary.

2. Annexations in Accordance with a Municipal Annexation Plan (Involuntary)

Properties that are to be involuntarily annexed over time are shown on a map that is published publicly. The map must be published for three years before annexation proceedings may occur.

3. Annexations in Exception to a Municipal Annexation Plan (Involuntary)

Subsection 43.052(h) of the Texas Local Government Code indicates certain conditions and requirements that, if met, authorize a city to involuntary annex property that is not shown on a Municipal Annexation Plan. The involuntary annexations that were approved in May 2015 were conducted under these exceptions.

Why Adopt an Annexation Plan?

- **Two Main Reasons Why Texas Cities Adopt an Annexation Plan**:
  - Exercise land use authority
  - Exercise taxing authority

- **Why This Matters**:
  - Land use authority allows a municipality to better protect its long term interests with regard to land use and development.
  - Taxing authority is a necessary tool for a municipality to be able to provide the important public services (i.e. police, fire, infrastructure).

Current McKinney Annexation Plan

Current McKinney Annexation Plan adopted in 1999 and generally states:

- City of McKinney has no intent to involuntarily annex properties for which an annexation plan (map) is required.

- City of McKinney reserves the right to involuntarily annex properties under the exception clause of the Texas Local Government Code.

Staff recommends amending the current McKinney Annexation Plan in order to establish a more proactive approach for land use, service and fiscal planning.

What's Included in a Municipal Annexation Plan?

Map Elements

- Must identify the areas to be involuntarily annexed under the plan.
- Areas to be involuntarily annexed must be contiguous to the current city limits.
- Areas to be involuntarily annexed must be shown on the Municipal Annexation Plan for three years after date of plan adoption.
- Annexation of these areas must be completed within 31 days after the 3-year "procedures/negotiations" period, or the city must wait 5 more years to annex the area.
- Areas removed from the plan after 18 months of being placed in the plan cannot be added back to the plan for 2 years.

Annexation Service Plan

- Municipal Annexation Plan must include a program under which the city will provide full municipal services in the annexed area, including a list of services required by law.

Next Steps

- City Staff is requesting Council direction to develop an amendment to the existing McKinney Municipal Annexation Plan (adopted in 1999).

- If Council agrees, Staff will began work with the City Attorney's Office to establish a framework for a Municipal Annexation Plan.

- Staff anticipates that a draft Plan will be ready for Council review by Spring 2016.