City of Austin
Policy for Extraterritorial Jurisdiction (ETJ) Adjustments
10/02/07

Purpose

The extraterritorial jurisdiction (ETJ) is the unincorporated land within five miles of Austin's full purpose city limit that is not within the city limits or ETJ of another city. It is the territory where Austin alone is authorized to annex land. The ETJ represents a city's potential growth boundary, both with respect to its future tax base and municipal service area. The ETJ further ensures a city's ability to capture its fair share of regional growth.

The ETJ also enables the City to extend regulations to adjacent land where development can affect quality of life within the city. ETJ regulations help to ensure that subdivisions that may be annexed by Austin in the future meet minimum standards for road access, water quality, and other factors.

It is for all of these purposes that the ETJ should be valued and promoted as a general public resource. However, there may be times when two cities mutually agree to an adjustment of ETJ boundaries to achieve more logical boundaries. The release of ETJ is a discretionary act on the part of cities. Before granting the request for an adjustment or release, the City of Austin seeks to ensure that the release will not negatively impact Austin's interests. Although the City of Austin has not acquired any substantive area through mutual transfer of ETJ, exchanges of ETJ are more likely to receive positive recommendations than requests for unilateral releases.

Requests for release of ETJ should establish a clear justification for release by meeting the standards that would help identify critical issues and potential negative impacts associated with a release.

This ETJ release policy is intended to:

- encourage orderly development
- protect the City's future tax base
- curtail the amount of jurisdiction that is being yielded annually
- create equity between competing jurisdictions, and
- provide a mechanism for assessing the appropriateness of future requests.

Adoption of the ETJ release policy would standardize the release process by providing a mechanism for measuring a request based on its individual merit. Standardization should make the release process more equitable for all jurisdictions and effectively reduce the amount of ETJ that is voluntarily released annually. The adoption of this policy is not intended to limit the authority of the City Council to consider or approve any particular release or exchange of ETJ.

Guiding Principles

1. The City of Austin should have no long-term annexation potential. The requesting jurisdiction should be in a better position than the City of Austin to annex and serve the property in the short term.
2. The release should serve the general public interest and convey benefits to all parties, either through the extension of services, enhanced environmental protection, or through mutual exchange of ETJ.
3. Development in the release area should be subject to equal or better water quality regulations than those in place at the time of release.
4. The release should not create a competitive disadvantage for similar development situated nearby within Austin's jurisdiction.
5. Requesting jurisdiction should be in compliance with all agreements regarding previous ETJ releases.

Background

Extraterritorial jurisdiction releases by the City of Austin have been voluntarily granted in the overall interest of promoting regional cooperation with its neighboring jurisdictions. It has been the City's policy to negotiate the terms for ETJ releases based on an ability to serve and to share in regional growth. The City has also been the target of legislation mandating the release of ETJ.

In the past, the process for evaluating requests included some regulatory comparisons, but most releases were negotiated on an ad hoc basis. Many of those negotiations were based on verbal agreements between elected officials.

This policy is intended to provide city staff with guidance for the evaluation of ETJ release requests and to standardize the ETJ release process. The process for releasing ETJ should be governed by an adopted policy and in accordance with Chapters 42 and 242 of the Texas Local Government Code. Future releases should be evaluated in accordance with the objective criteria in this policy that measure annexation potential and compare both service delivery and regulatory controls. Areas that do not meet these standards should not be considered unless there is a clearly demonstrated hardship or extenuating circumstance that would justify the action.

Process

All requests for release should be forwarded by the governing body of a jurisdiction to the Mayor of the City of Austin with copies to the City Manager and appropriate Neighborhood Planning and Zoning Department planning staff. The request should include:

- a detailed justification for the request,
- an identifiable description of the tract including a map and field note description of the area,
- a statement regarding enforcement of environmental regulations upon release,
- information regarding pending permits on the exchange property,
- a support letter from the owners of the property proposed for exchange or release, and
- any other support documentation necessary to make an assessment.

A contact person should be stipulated in the letter of request if more information is necessary.

The request would then be circulated to applicable departments for review and comment (Austin Water Utility, Watershed Protection, and other reviews as appropriate) and evaluated using the criteria described below. A staff recommendation for requests that may qualify for release would then be forwarded to the environmental board, planning commission, or other boards and commissions as appropriate, and City Manager's Office for consideration. [NOTE: Satisfaction of the criteria in this policy does not guarantee Council consideration or release of ETJ.]

Ultimately, all ETJ adjustments must be approved by the City Council. A copy of the approved and signed resolution would then be forwarded to the contact person once it had been filed with the City Clerk's Office. If a request was denied, a letter explaining the reasons for denial would be forwarded to the mayor's office of the requesting jurisdiction with a copy to the designated contact person.

Review Criteria

Annexation potential	Determine the potential for the area to be annexed (1) by the City of Austin and (2) by the receiving city including evidence of ability to provide services in accordance with annexation statutes.
Environmental impact	(1) Assess the area in terms of its environmental sensitivity, and (2) evaluate regulations that would apply should the release be granted.
Infrastructure investment	Determine the impact of the proposed release on existing or planned investments in (1) water and wastewater utility or (2) roadway infrastructure to serve this area
Long-term effects of cumulative ETJ releases to competing jurisdictions	Assess the effects (1) of limiting the geographic expansion of Austin's regulatory authority, (2) of increasing the amount of land near Austin, but beyond Austin's jurisdiction, available for development, and (3) on potential tax revenue.
Hardship or extenuating circumstances	Determine whether the release will relieve a condition (1) that causes a unique and undue hardship on a property owner, or (2) where unusual circumstances dictate the need for a release.

1. Annexation potential - The area requested for release should be evaluated for future annexation potential by the City of Austin and the requesting jurisdiction. An essential component of determining an area's annexation potential is the future ability to provide city services. The City of Austin should reasonably be able to serve an area at some future time in order to be considered for annexation. Geographic constraints, including certain physical barriers, such as lakes, rivers or canyons, can create jurisdictional islands and make service delivery cost prohibitive. The requesting jurisdiction should be in a better position than the City of Austin to annex and serve the property in the short term or provide assurances that the area would be included within a mandated three-year annexation plan and provided levels of service as defined by the statutory requirements set forth in Chapter 43 of the Texas Local Government Code.

Evaluation measurements should reflect current statutory requirements. Criteria would include:

- Current jurisdiction. Limited purpose jurisdiction should remain under City of Austin's regulatory authority. In addition, COA ETJ that is enclosed by City Full or Limited Purpose should not be released.
- Contiguity requirements. The distance between the existing city limits and the subject property limits the potential to establish contiguity required for annexation.
- Future ability to serve. General service assumptions would be used to determine if an area could feasibly be served by the City--present or future.
- Growth and development trends. A release should not physically restrict the City's future ability to annex and serve adjacent areas with future development potential. In addition, a release should not cause the loss of contiguity to existing ETJ.
- Potential future sales and property tax base or revenue generation.

Since the Desired Development Zone (DDZ) represents the preferred growth corridor and future property tax revenue for the City, ETJ releases within the DDZ would not be considered without a demonstrated hardship to justify the request. It is assumed that the City of Austin would be in a position to serve any area within the Desired Development Zone in the future.

2. Environmental impact - The request for release should be evaluated in terms of the potential impact on water quality and designated habitat. This would include a comparison of habitat management practices, watershed regulations, and any environmental regulations imposed by overlapping jurisdictions, including federal, state, special districts, or county controls, that would be applied prior to and subsequently after an area was released.

Measurable criteria would include:

- Identification of applicable COA "development zone".
- Comparison of all watershed regulations, non-point source pollution control ordinances or water quality controls that would apply before and after release.
- Comparison of development standards as it relates to impervious cover, density, and waterway and critical environmental feature set back requirements.
- Proposed wastewater treatment method and applicable treatment standards.
- Determination of habitat designation and if applicable the management practices of the responsible entity.

Release requests for the purpose of creating areas of "regulatory safe havens" typically do not serve the overall public interest and should not be considered. Development allowed under less restrictive controls often gains a competitive market advantage. To mitigate this effect, a release should be made contingent on encumbering the property with public or private controls that would mirror regulations in place prior to the release. These controls may include adoption of COA land development regulations by the requesting jurisdiction, imposition of private deed restrictions to the property that would apply COA impervious cover limitations, filtration standards, and set back requirements, or enforcement of LCRA non-point source pollution controls through an interlocal agreement.

3. Infrastructure investment – The request for release should be evaluated in terms of existing and planned investments by the City in utility and roadway infrastructure, including right of way that has been dedicated to or purchased by the City to serve the area. An area should not be released if the release would reduce the city's ability to recoup the costs of the investments in the area. Further, the potential impact of the proposed release on the Austin Water Utility's service area should be considered prior to release.

4. Long-term effects of cumulative ETJ releases to competing jurisdictions – Over time, the effect of releasing ETJ has resulted in the substantial loss of Austin's ETJ to neighboring jurisdictions. ETJ releases may contribute to the accelerated development of the outlying rural areas and facilitate the rapid expansion of the suburban municipalities. Potential tax base and sales tax revenue have been lost as a result. Requests for the release of Austin's ETJ should include an historical account of any territory acquired by the municipality from the City of Austin.

Releases should be evaluated according to the frequency and cumulative total of area the City has rendered to a requesting jurisdiction. This is particularly critical in areas of high growth potential or where environmental protections have been compromised as a result of previous releases.

5. Hardship or extenuating circumstances – There are situations where an ETJ release relieves a hardship condition or where a unique circumstance warrants a release. Where these situations exist, the standard criteria also apply. The creation of a regulatory safe haven will not be considered as a hardship condition. It should be incumbent on the jurisdiction requesting the release to adequately demonstrate the need for consideration as a hardship or a compelling or unusual circumstance. As a general rule, hardships should apply to a single ownership tract of land that is typically less than five acres.

Description of Request:

Staff Recommendation:

Checklist for ETJ release review:

Property Description:		
Annexation Potential:		
☐ Does the area have the potential to be annexed by the City of Austin in the long-term?	Yes	No
☐ Does this request demonstrate that the requesting jurisdiction is in a superior position to serve the property with similar levels of service *and* will annex the area upon release or include the area in an annexation plan?	Yes	No
☐ Would the proposed release negatively impact the city's long term annexation plans?	Yes	No
Staff comments:		
Environmental Impact:		
☐ Does this request clearly demonstrate that the requesting jurisdiction will provide similar or superior regulatory and/or watershed protections afforded through the development process?	Yes	No
☐ Does this request clearly demonstrate similar or superior regulatory and/or watershed protections applied to the area through conservation easements, transfer of development rights, or other private mechanisms prior to release, provided that the use of such controls is agreeable to each party?	Yes	No
Staff comments:		
Infrastructure investment:		
☐ Would release of this ETJ negatively impact the city's investment in any existing or planned water and wastewater utility infrastructure?	No	Yes
☐ Would release of this ETJ negatively impact the city's investment in any existing or planned roadway infrastructure?	No	Yes
Staff comments:		
Growth and Planning Impacts of cumulative ETJ releases:		
☐ Is the requesting jurisdiction in compliance with all agreements and contracts with the City of Austin?	Yes	No
☐ Have previous releases to this jurisdiction ensured that the release of ETJ has not created a competitive disadvantage for similar development within Austin's nearby jurisdiction?	Yes	No
☐ In a high growth area or the desired development zone, have previous releases ensured Austin's ability to maintain and expand its ETJ?	Yes	No
☐ In areas previously released to this jurisdiction and in keeping with Austin's goal of protecting water quality, has development occurred in accordance with terms and conditions that minimize the risk of pollution of the region's water resources?	Yes	No
☐ Do opportunities exist for exchange of ETJ in conjunction with the requested release?	Yes	No
☐ If exchange is proposed, does the result achieve more logical boundaries?	Yes	No
Staff comments:		
Hardship or extenuating circumstances:		

☐ Is there a claimed hardship?	Yes	No
☐ If a hardship is claimed, does this request relieve a hardship condition?	Yes	No
☐ Are there special or unique circumstances for this request?	Yes	No
☐ Does the request clearly demonstrate justification for the release?	Yes	No
Staff comments:		