

V. Development Policies

For this book's purposes, development means any action that will impact, either positively or negatively, the territorial expansion of the city. For example, a large subdivision on the edge of the city limits meeting all city standards should be annexed eventually and will result in the expansion of the city; conversely, a sanitary landfill on the edge of the city probably would preclude the city's growth and expansion in that direction. In addition, there are other development actions outside the city limits which are not quite so noticeable, but which still affect the city's territorial expansion: 1) Utility main extensions; (2) Service connections to existing utility mains; (3) Creation of utility districts, such as Farmers Home Administration-financed water districts in rural areas or Municipal Utility Districts (MUDs) in suburbia; and (4) Decisions by other governmental entities such as the location of a new US Post Office, the construction of a highway loop around the city by the Texas Department of Transportation, the construction of a park and ride facility by the urban area's metro authority, or the construction of a new school on the edge of the city.

Cities do not exist in a vacuum where they are unaffected by the developmental actions of others; but cities do affect the developmental actions of others by their subdivision ordinances, utility extension policy, MUD creation consent agreements, or annexation policy - or lack thereof.

Cities have an impact upon an area through their very existence as a geographical entity. The question a city council must ask is what type of impact does it want - positive or negative? Frequently, small cities take a do-nothing approach towards development outside the city limits, and the result is negative, with problems such as scattered housing, undersized water mains, substandard septic tank installations, septic tanks located in poor soils, poor street layout, drainage problems, and so on. Unless a city is willing to take charge of the area immediately outside the city limits, which is really its future, through policies and ordinances, then all these negative development events can and will happen.

However, if a city is willing to adopt policies and ordinances controlling certain aspects of development and willing to enforce these policies, then a city can avoid many of these problems. The most perfect policies in the world will not work if they are not enforced. Adopting policies after the fact will not cure existing developmental problems, but enforcement can help cities avoid future problems. (See Appendix V-A for sample questions for evaluating your city's developmental policies.)

Review Your City's Policies

First, you must determine what development policies exist in your city, their goals, their effectiveness, and any existing developmental problems.

Begin your review with the understanding that each city will have different types of development problems. For example, a small city on the fringe of a large city should be concerned about the large city's annexation plans which eventually may limit its growth, and consequently should consider an annexation plan of its own, which extends its extraterritorial jurisdiction (ETJ). On the other hand, a small city in west Texas, located 80 miles from the nearest large city, may not be so concerned about its ETJ because it knows that no other city can possibly infringe upon it. In the first case, extending the ETJ would be a priority, while in the second case, a strong policy on water main extensions may be the priority for controlling growth. Another problem common to the urban fringe of metropolitan areas is overlapping ETJs. Frequently two or more cities will claim the same area for their respective ETJs, which necessitates a negotiated agreement on ETJ locations. Remember when negotiating such an agreement that long range -- 50 years to 100 years -- is not too far to visualize how important the area is to your city. Once you have given up an area to another city, it is virtually impossible to regain it.

Annexation

Below is an example of an annexation policy that states the criteria for determining whether or not it is appropriate to annex an area to the city:

1. Is the area a net financial benefit to the city? Subtract all the known costs of the annexed area (street maintenance, utility maintenance, police and fire protection, street lights, and capital improvements) from known revenues (property and sales taxes, utility receipts, and permit fees) to determine this figure. An obvious example of this type of annexation is when a key commercial area such as a shopping center is the main property in the annexation. Usually such a commercial annexation is an easy analysis because of the sales taxes produced from the businesses. Residential properties are more difficult to analyze, and usually are not a net financial benefit for the city. Especially when a residential area outside the city limits has been paying 1.5 times the inside the city water and sewer rates, the annexation may result in less net revenues to the city because the increased city property taxes do not offset the water and sewer fees. See Appendix V-B for an illustration of determining the net financial benefits.

2. Is the area in the city's prime growth direction? If it can be determined that the city will grow in a certain direction for whatever reason (e.g., the terrain is conducive to residential development, one major landowner has indicated long range plans for development, and/or planned infrastructural improvements will attract development) that is conducive to residential development, then that area should be annexed before development in order to optimize the city's development controls. For example, the Uvalde City Council in the mid 1980's annexed eastward along US Highway 90, because that was the direction major commercial development was headed, and major water and sewer improvements were planned for that area.

3. Will annexation of the area protect the city from substandard developments? When an area is inside the city, various city ordinances such as building, plumbing, and electrical codes can help to control the quality of construction, plus zoning can prevent unwise uses of property. On the other hand, the city has no controls outside the city limits if the proposed use of property (such as a junk yard, hog farm, substandard housing, etc.) does not come under the subdivision ordinance. In a case where the subdivision ordinance is not applicable, a substandard development would negatively impact the city's potential growth area and severely retard the city's growth and development in that direction. This is certainly a waste if the area is suitable for city sewage service without lift stations, has good drainage, and is easily served with water. An example of this type of annexation occurred in one city that annexed a 1,000 L.F.strip along a major river in order for zoning to preclude sand pit operations which the council felt were detrimental to the development of the city.

For areas meeting none of the suggested criteria, you should have some other rationale for the annexation. For example, you may annex an undesirable area, such as an old residential neighborhood which the city has grown around, because it is only logical that this area should be in the city limits for the good of the entire community, or you might have to annex an area in order to comply with the US Voting Rights Act of 1965, which requires that annexations may not dilute the voting strength of minorities.

Whatever the reason for your annexations, be sure that there is adequate justification for annexations, not just a desire to increase the square mileage or the population of the city. You should remember that every annexation costs the city and places an additional burden upon existing city services.

Priorities should be established for annexing areas into the city based on the criteria listed above. Areas which meet all the criteria should be rated number one (#1), areas meeting two of the criteria might be rated a number two (#2) and so on; your annexation plan should proceed according to these priorities. (See Appendix V-C for an example of determining annexation priorities.)

In annexations, you should exercise caution to ensure that you are complying with the following laws:

- (a) Chapter 43, *Texas Local Government Code*, Municipal Annexation requires proper notices, public hearings, some city services such as police and fire protection, street maintenance, and garbage collection within 60 days, and construction of capital improvements such as water/sewer/streets, started within 2 years and be substantially completed within 4 1/2 years. Also, the City Council must adopt a service plan showing how the city intends to provide city services to the annexed area. (See Appendix V-D for a sample service plan.)
- (b) The US Voting Rights Act of 1965 as amended, which stipulates that annexation shall not dilute the voting power of minorities.
- (c) Chapter 395, *Texas Local Government Code*, Financing Capital Improvements (Impact Fees) lists requirements for fees that cities may charge for water, sewer, storm water, and road improvements.

Utility Extension Policy

By the very act of installing utility services (especially water service) in an area, the city is predetermining that growth will occur in that area. It is a given that if water and sewer lines are available, people will want to hook on to them. Significant growth will not occur without utility services; therefore, a city's growth can be controlled by not installing utility services.

Some cities allow utility main extensions or service connections to be made outside the city limits, causing most the new housing development to occur outside the city limits. Some cities agree to sell water to water districts outside the city limits with the idea of making money for the city, but without realizing they will be encouraging growth outside the city limits. In one city prior to my employment, the council had approved a Farmer Home Administration Water District outside the city limits, but I made sure the council included in the water sales contract with the District that the number of customers was limited to a fixed number. Several times thereafter, as growth occurred in the District because of the water lines, the District sought to have the number of customers expanded, but the council turned them down each time.

Utility service outside the city limits should be provided only after the city develops a firm understanding of what such service means to the city, and then only for good reasons:

1. Service to an industrial or commercial site which will benefit the city.
2. Service to a residential development which complies with the city subdivision ordinance, and which will be eventually annexed.
3. The city is growing in that direction.

You are encouraged to have tight controls for connections to the water or sewer mains. Such controls are especially necessary where you have an existing main outside the city limits and there are requests for connecting service lines to this main. Without controls, you are creating future problems for the city. For example, without controls for water or sewer mains, you may have more than one residence connected to a service line; you might have high density housing connected to undersized utility lines; health hazards caused by people connecting to water but not to sewer; and so on. In order to avoid some of these problems, the following suggested policy would provide adequate controls:

Sample Utility Connections Policy

1. Applicants for connections to existing mains shall sign an agreement to support the annexation of their property when presented to the City Council. While this does not have any binding legal authority, it does

place the applicant on notice that eventually the property will be annexed and that a moral commitment has been made not to oppose the annexation.

2. Where the property of the applicant lies adjacent to the city limits, the applicant shall first petition the City Council for voluntary annexation if the city requests such action.
3. Those applicants whose properties are not in a platted subdivision shall plat such properties in compliance with the city's subdivision ordinance.
4. City sewage collection and treatment is required with city water service. (Note: Variances may be granted for septic tanks; which are installed and functioning in compliance with Texas Natural Resources Conservation Commission standards, and only for existing structures).
5. Any proposed utility extension or connection outside the city limits must be reviewed with regard to its impact on the city's master plan. For example, a city would not want to provide utilities to a mobile home on the edge of the city limits when only single family dwellings are located inside the city limits and the master plan projects single family dwellings in that area outside the city.

Reimbursements

Some provisions should be considered for reimbursing contractors, builders, private homeowners, etc., who, at their own expense have installed water or sewer mains, when another party connects to the main. Otherwise, the other party who paid no expense for the main installation is receiving a "free ride." Under a reimbursement policy, the person wanting to connect to a main extension would have to pay the builder a pro rata share of the main cost. Such a policy can be simple or it can be complicated:

1. Simple Reimbursement Policy. The person who has paid for the construction of water, sewer, or gas mains shall, for any additional connection made within five years from the date of such construction, receive a reimbursement of the front footage fee paid by the person desiring the new connection. Such reimbursement, however, shall never exceed the original cost of construction.

2. Complicated Reimbursement Policy. Some cities have formulas dictating special factors for different shapes of property abutting on a main. For example, one city's policy is 11 legal pages in length and establishes a payment schedule for each property owner's share depending upon a specified number of points for frontage, acres, and linear distance from origin of the extended main. The more points a property owner has, the higher his payment for the main extension.

Know What Is Happening Outside Your City Limits and Do Something

The important point concerning development is to ensure that your city understands what is occurring outside its limits and what this means to its future. Doing nothing about such development or ignoring the development are policies that can have consequences for your city. In other words, *no policy* is a policy. The City Council probably will not see the results of its own policies -- be they good or bad -- for 20 to 30 years. It is not uncommon for the development policies or lack of policies in the 1950's to create the results in the 1990's. The question is, do you want the citizens in 2010 or 2020 to be paying for lack of foresight now?