

LAND DEVELOPMENT UPDATE – WATER/WASTEWATER CCNS AND DISTRICT ANNEXATIONS

Texas Municipal Utilities Association
Utility Leadership and Management Conference

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2023



88th Regular Session



Land Development



Overview of Presentation

- **Explanation of CCNs**
- **Regulatory Trends on CCNs**
- **Municipal Annexation Considerations**
- **Legislative Changes?**

What Are Water and Sewer CCNs?

- Certificate of Convenience and Necessity (CCN)
- Water and Sewer
- Texas Water Code, Chapter 13, Subch. G
- 16 Texas Administrative Code, Chapter 24
- Regulated by the Texas Public Utility Commission

Who Regulates CCNs?

Initially: Public Utility Commission



Texas Natural Resources Conservation Commission



Texas Commission on Environmental Quality



As of September 1, 2014, back to PUC

(per House Bill 1600, SB 567 from 2013 Legislative Session)

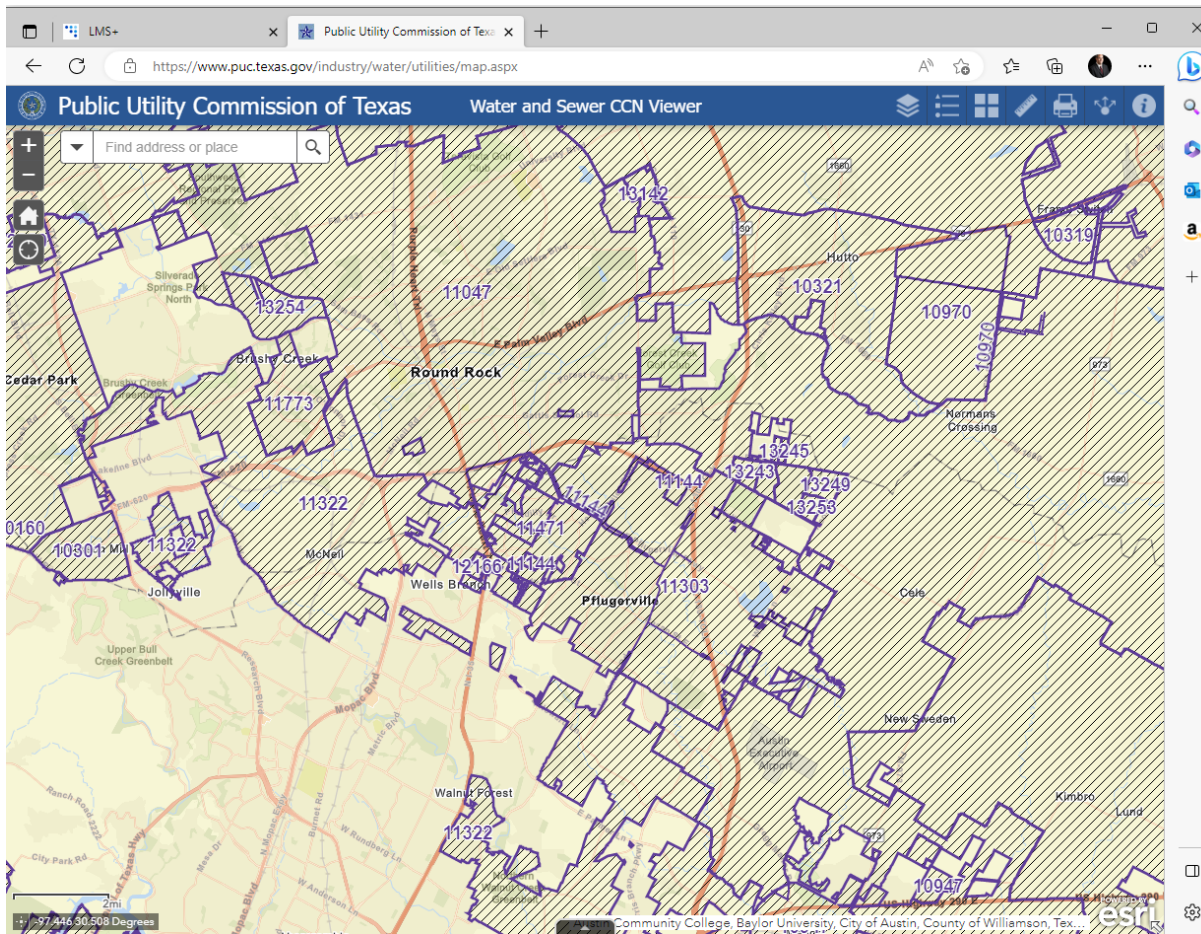
What Does a CCN Get You?

- CCNs provide the exclusive right to provide retail water/sewer service
- CCN holder is required to provide render continuous and adequate service
- CCNs is not a vested property right – it is subject to decertification

Types of CCNs

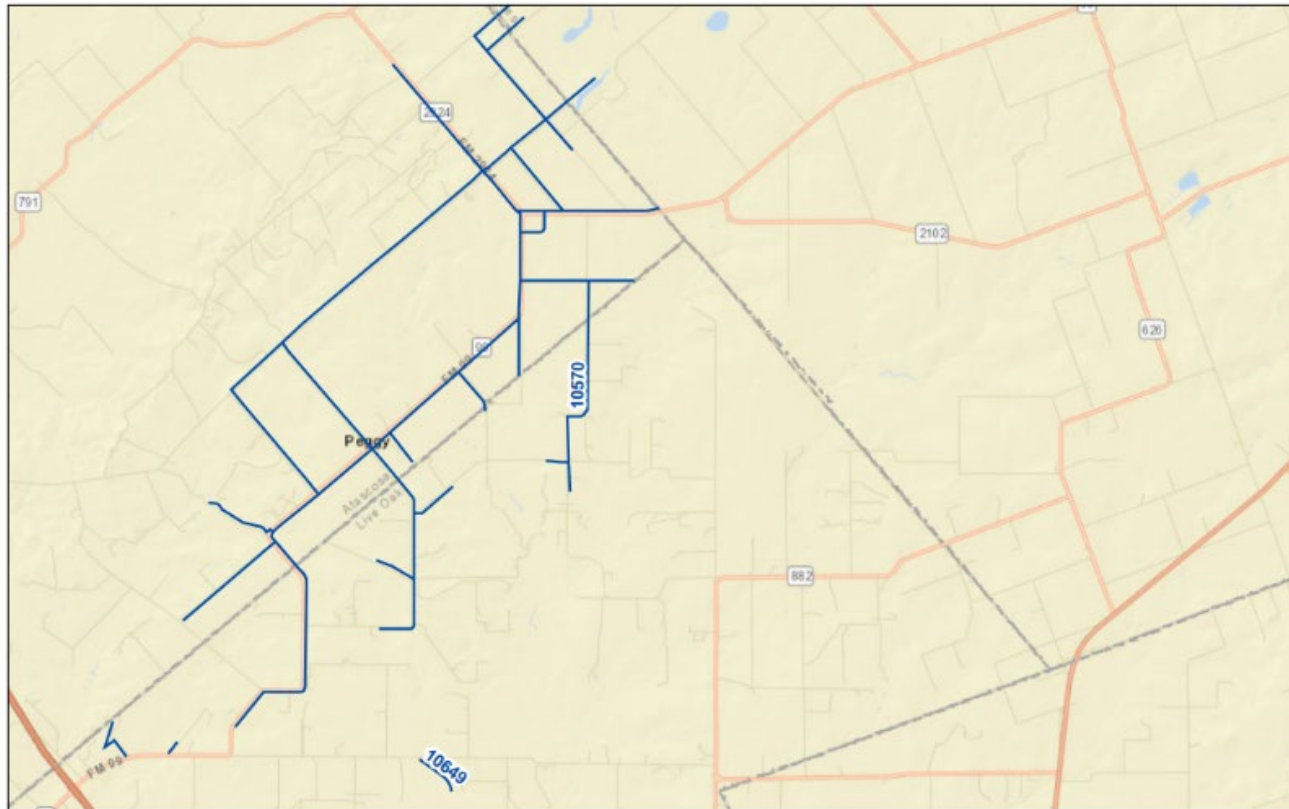
- **Facilities Only:** Facilities only lines are granted for a "point of use" service area that covers.
- **Facilities + 200 Feet:** Areas of utilities represented by lines; however, they also include a buffer of 200 feet. The lines can, but may not necessarily, correspond to distribution lines or facilities in the ground and which normally follow along roads.
- **Bounded Service Areas:** Areas that form closed boundaries.

What Do CCNs Look Like?

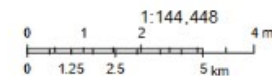


What Do CCNs Look Like?

Water and Sewer CCN Viewer

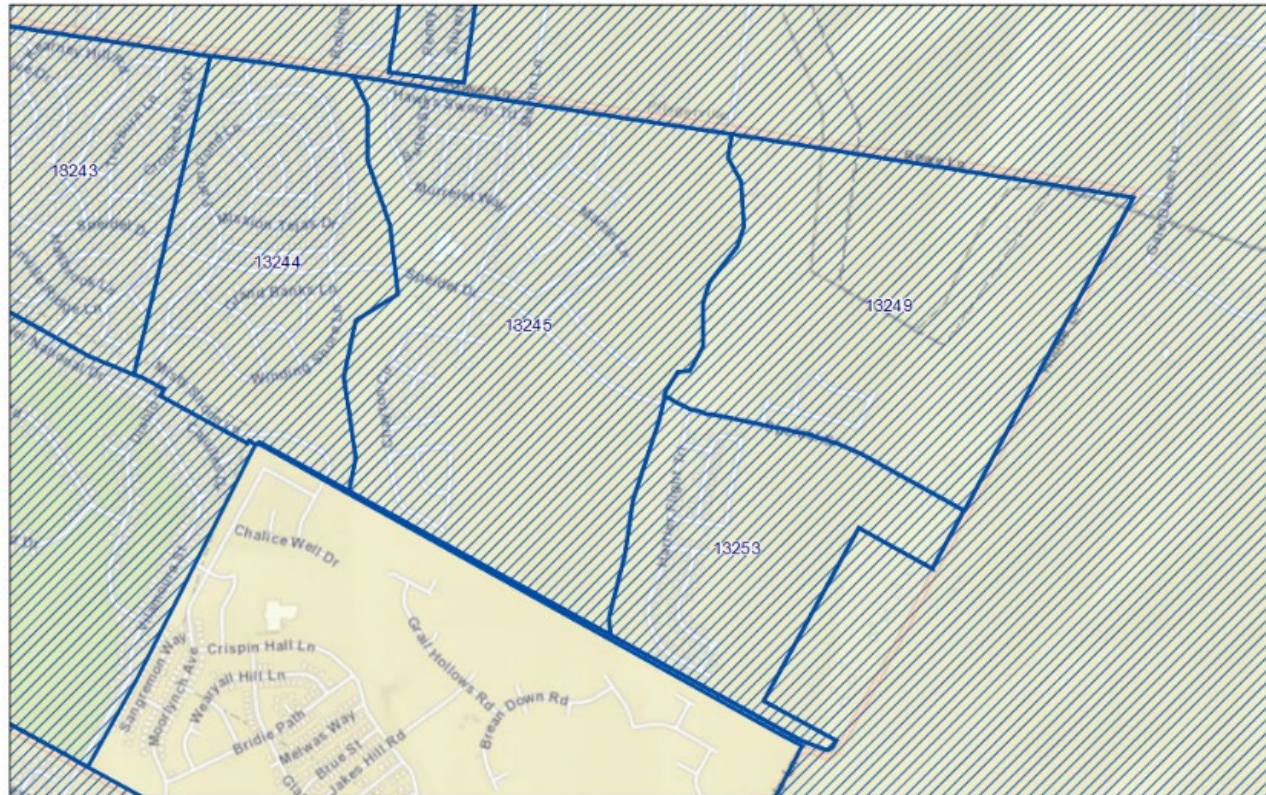


February 22, 2018

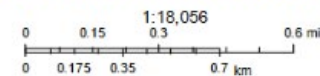


What Do CCNs Look Like?

Water and Sewer CCN Viewer



February 22, 2018



What Activity is Addressed by a CCN?

- Retail Water/Sewer Service:

“Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.”

- Retail Public Utility:

“means any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.”

Are CCNs Required to Provide Service?

- YES (Required)
 - For-Profit Corporations (aka IOUs, aka Utility)
 - Non-Profit Water Supply/Sewer Service Corporations
 - Affected County
- NO (But may be obtained)
 - Municipalities and Districts
 - Other Exceptions

Availability of Information Regarding CCNs

Utility Type <input checked="" type="radio"/> All <input type="radio"/> Electric <input type="radio"/> Water <input type="radio"/> Telephone <input type="radio"/> Others	Control Number:	<input type="text"/>
	Item No:	Equal To (=) <input type="text"/> *Not required
	Utility Name:	<input type="text"/>
	Filing Party:	<input type="text"/>
	Item Type:	All <input type="text"/>
	Date Filed:	<input type="text"/> ... to <input type="text"/> ... (Date Format mm/dd/[yy]yy)

Search

Clear Form

NOTICE: Date ranges can now cover a three month time period.{Approx. 92 days}

Any questions or comments are welcome. Please email the [HelpDesk](#).

NEW SEARCH FEATURE

Don't Know the Control Number?

Try entering some key words to search the Style (Description) for the Control No

Style:

Utility Type: ☒ All ☐ Electric ☐ Water ☐ Telephone ☐ Others

Project Filed: ... to ...

Search

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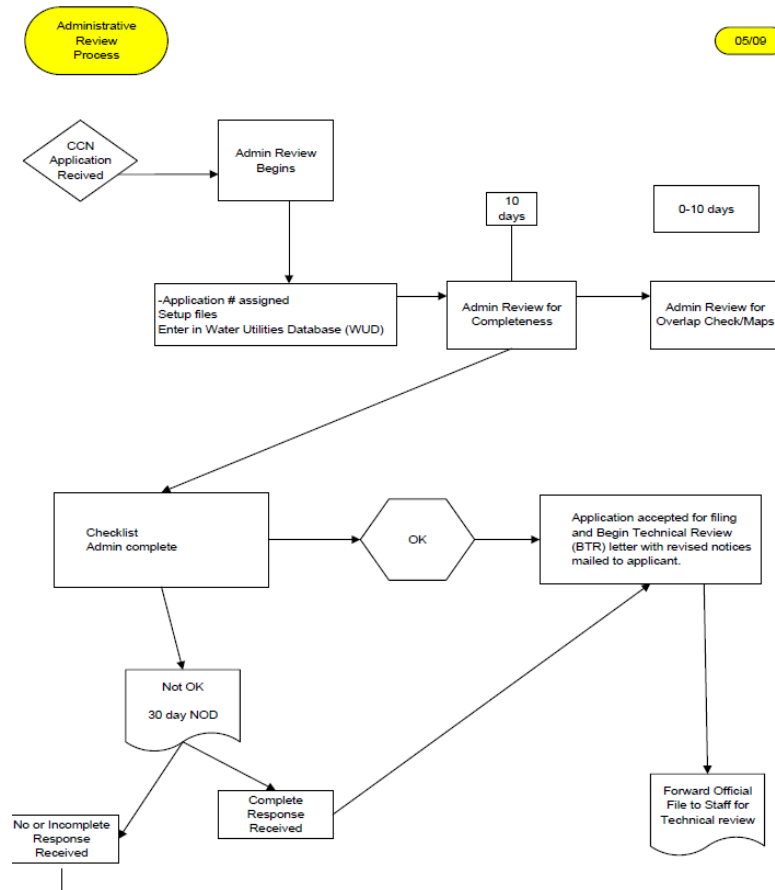
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How Does the PUC Regulate CCNs?

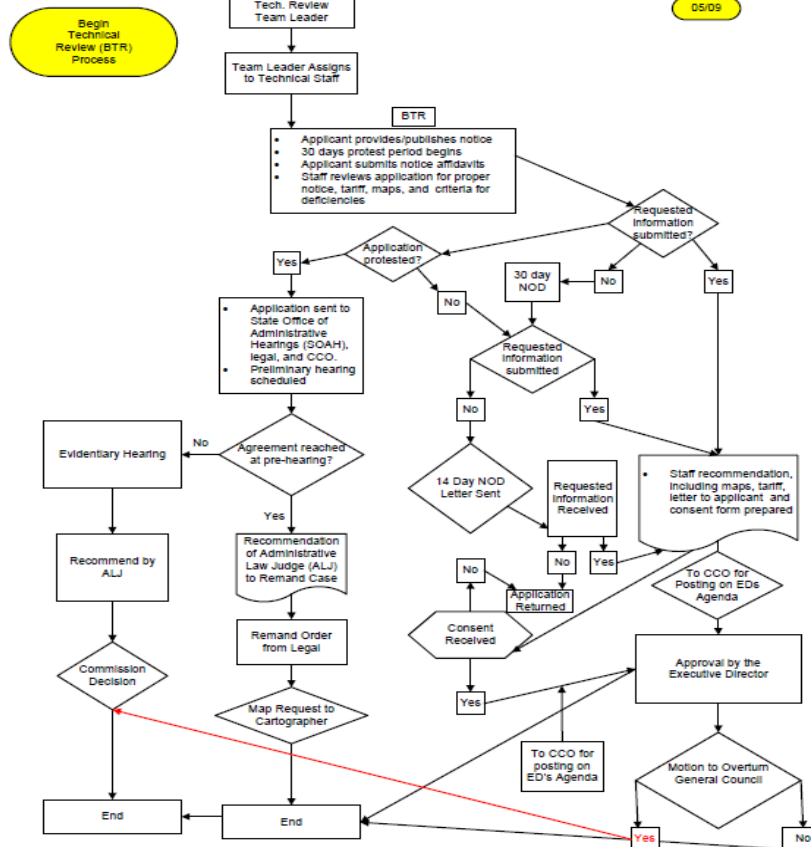
- Applications
 - New CCN
 - CCN Amendment
 - CCN Transfers
 - System Transfers
 - Decertification

CCN Application Review Process?

CCN Administrative (Admin) Review Process - Flowchart



CCN Technical (Tech) Review Application Process - Flowchart



* Includes TWC 13.255, 13.254 and 13.246 type applications.

CCN Application Requirements

- PUC Application Form
- Exhibits/Topics:
 - Maps/Geographic Data
 - Electronic Data
 - Financial Summary
 - List of Neighboring Entities and Landowners
 - Inspection Reports/Repairs
 - System Approvals
 - Required Consents
- Financial, Managerial, and Technical Capabilities

How Are CCNs Transferred?

- Service Area Transfers
 - TWC § 13.248
- Sale, Transfer, Merger Applications
 - TWC § 13.301
- Purchase of Voting Stock
 - TWC § 13.302

How Are CCNs Decertified?

- “Old Fashioned Decertification”
 - TWC § 13.254(a)
- “Expedited” Decertification
 - TWC § 13.254(a-1)
- “Streamlined Expedited” Decertification
 - TWC § 13.2541

How Are CCNs Decertified?

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- “Expedited” Decertification
 - TWC § 13.254(a-1)
- “Streamlined Expedited” Decertification
 - TWC § 13.2541

How Are You Doing?



What are Some Issues of Interest at PUC?

- New CCN Applications
 - Demonstrating Need
- STM Applications
 - Fair Market Valuation Process
- CCN Decertification Applications
 - Compensation
- Cease and Desist Petitions

What Is Demonstrating Need?

- Texas Water Code § 13.246(c):

(c) CCNs and amendments to CCNs shall be granted by the PUC on a nondiscriminatory basis after consideration by the utility commission of:

(2) the need for additional service in the requested area, including whether any landowners, prospective landowners, tenants, or residents have requested service;

Demonstrating Need- Standard

- Historic
- Recent Past
- Current

Demonstrating Need

- Standard - Historic
 - Minimal Analysis
- Standard – Recent Past
 - Need some documentation to demonstrate a connection between need and the CCN area requested

Demonstrating Need

- Evolving Standard- Stricter connection between the area requested and the demonstration of need in certain situations
- Remarks from PUC
 - I have an overall concern with approving any application for a certificate of convenience and necessity (CCN) to serve large geographic areas, especially when the applicant does not have specific, immediate plans to expand facilities to serve that area. (Chairman Walker's June 27, 2018 Memorandum, Docket 46993)

Demonstrating Need

- Implementation

- Minimal demonstration of need:
 - Municipality – inside corporate limits
 - Uncertificated areas with customers already being served
- Higher level of demonstration of need:
 - Municipality – outside corporate limits
 - Other applicants where service not yet provided

Demonstrating Need

- PUC Docket No. 47995 – City of Hutto
 - Wholesale Water/Wastewater Contracts
 - Executed Development Agreement with no start date
 - Preliminary Plats
 - Surveys
 - Site Plans and Development Plans
 - Approved Plats
 - Market Assessment
 - Water/Wastewater Master Plans
 - Capital Improvement Plans

What is the Fair Market Valuation Process?

- Texas Water Code § 13.305
 - Recap: STM Applications are for acquiring systems and CCNs
 - PUC determines what rates can be charged post-closing
 - Only available to Class A and B Utilities
 - FMV Process:
 - Occurs before STM Application is filed
 - Parties agree on independently determined transaction price
 - Doesn't impact actual closing price

How Does the Fair Market Valuation Process Work?

- File FMV Application
- PUC selects 3 qualified utility valuation experts
- Experts have 120 days to prepare report
- FMV amount is the average valuation
- Then file STM Application with valuation amount

What is the Compensation Process?

- Applicable to CCN decertification applications
- 2019 Legislative Session - SB 2272
- Modified Texas Water Code § 13.254, and created § 13.2541

Compensation Process: Post- SB 2272

- TWC § 13.254(d):

“[a] retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section unless just and adequate compensation required under Subsection (g) has been paid to the decertified retail public utility.”

- TWC § 13.254(g):

“The determination of compensation by the independent appraiser shall be binding on the utility commission. The costs of the independent appraiser shall be borne by the petitioner.”

Compensation Process: Post- SB 2272

- Implementation of TWC § 13.254(d) by the PUC in a §13.2541 CCN decertification petition
 - PUC processes the petition in 60 days
 - Issues Order re: petition for decertification
 - Begins process for determining amount of compensation

Compensation Process: Post- SB 2272

Sixty-day administrative approval of expedited release	December 21, 2020 ¹
<i>In the event expedited release is granted and the petitioner and Gulf Coast can select an agreed-upon appraiser</i>	
Deadline for petitioner and Gulf Coast to select an agreed-upon appraiser	Within 10 days after the Commission approves expedited release
Deadline for appraiser's report	Within 70 days after the Commission approves streamlined expedited release
Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by the petitioner to Gulf Coast	Within 60 days after appraiser's report
Deadline for the petitioner to pay any compensation due to Gulf Coast	Within 90 days of Commission's final order on compensation
<i>In the event expedited release is granted and petitioner and Gulf Coast are unable to select an agreed-upon appraiser</i>	
Deadline for reports from the petitioner's appraiser and from Gulf Coast's appraiser	Within 70 days after the Commission approves expedited release
Deadline for Commission Staff's appraiser's report	Within 100 days after the Commission approves streamlined expedited release
Deadline for Commission's final order determining the amount of monetary compensation, if any, owed by the petitioner to Gulf Coast	Within 60 days after Commission receives the final appraisal
Deadline for the petitioner to pay any compensation due to Gulf Coast	Within 90 days of Commission's final order on compensation

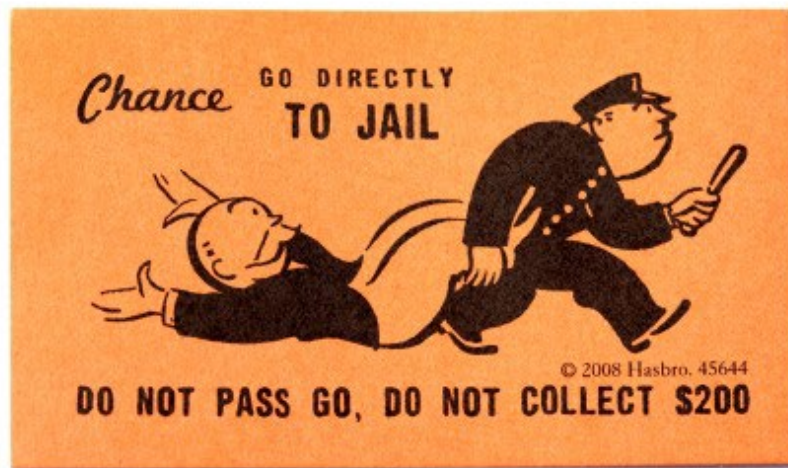
Are There Any Pitfalls If I Miss a Deadline?

- YES! For a Streamlined Expedited CCN Decertification
 - Petitioner Fails to Provide an Appraisal
 - CCN Holder Fails to Provide an Appraisal



Cease and Desist Petitions

- TWC §13.252
- May not interfere, attempt to interfere, or provides service withing another entity's CCN
- PUC may issue order to cease and desist from such activity



Cease and Desist Petitions

- The petition must be filed within 180 days from the date the petitioner becomes aware, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days



Is There Any New Legislation?

- SB 893 – Non-substantive CCN Amendments
- HB 2442 – Notice Amendments to CCN Decertification Applications

What are the Powers of a District

- Construct, acquire, own and operate facilities to:
 - supply water
 - collect and dispose of domestic, industrial, or communal wastewater;
 - divert and control local storm water;
 - irrigate the land in a district;
 - alter land elevation in a district;
 - navigate coastal and inland waters of the district;
 - provide parks and recreational facilities; and
 - provide municipal solid waste collection services.

Powers of a Municipality

“the governing body of a municipality may adopt, publish, amend, or repeal an ordinance, rule, or police regulation that is for the good government, peace, or order of the municipality... and is necessary or proper for carrying out a power granted by law to the municipality...”

Texas Local Gov't Code § 51.001

Powers of a Municipality

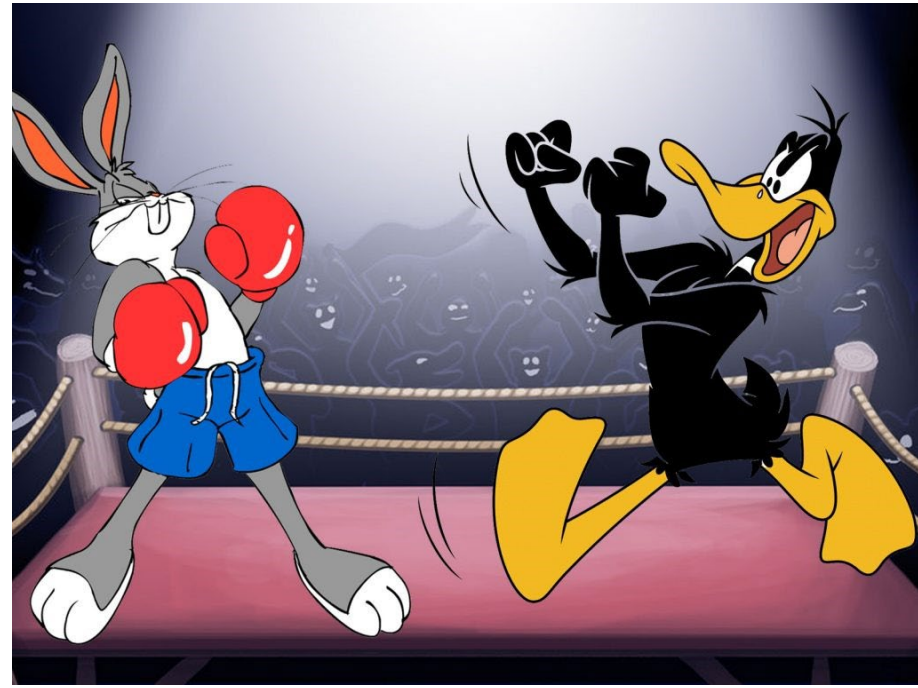
a HOME RULE CITY:

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:

may only exercise those powers that are specifically granted or implied by statute.

Intersection of Cities and Districts



Intersection of Cities and Districts

- Wholesale Water / Wastewater Service:
 - Contracts/Ordinances
 - Water Rates Protests
 - Public Interest Test
 - Cost of Service Test
 - Water Conservation Plans
 - Drought Contingency Plans
 - Water/Wastewater Projects

Intersection of Cities and Districts

- District Creations
 - Water Districts Can Be Created by:
 - Texas Legislature
 - Texas Commission on Environmental Quality
 - Commissioner's Court
- District Conversions- TCEQ
 - WCID-> MUD or WSC -> SUD

Intersection of Cities and Districts

- District Creations - City Consent Required

“(a) No land within the corporate limits of a city or within the extraterritorial jurisdiction of a city, shall be included in a district unless the city grants its written consent, by resolution or ordinance, to the inclusion of the land within the district in accordance with Section 42.042, Local Government Code, and this section.”

Tex. Water Code § 54.016(a)

Intersection of Cities and Districts

- Can a City condition its consent? Yes.
 - In giving its consent, the municipality may not place any conditions or other restrictions on the creation of the political subdivision other than those expressly permitted by Tex. Water Code §§ 54.016(e) and (i)

Tex. Loc. Gov't Code § 42.042 (a)

Intersection of Cities and Districts

- What a City May Require for its Consent:
 - District construct all facilities to serve the land per the plans and specifications approved by the city;
 - the City shall have the right to inspect all facilities;
 - restrictions on the terms of the district's bonds/notes, so long as they do not render them unmarketable; and
 - may restrict the purposes of district bonds to water, wastewater, stormwater, organizational, and operating expenses.

Tex. Water Code § 54.016(e)

Intersection of Cities and Districts

- What a City May Not Require for its Consent:
 - A city may not require annexation as a consent to creation of any district.
 - A city shall not refuse to approve a district bond issue for any reason except that the district is not in compliance with valid consent requirements applicable to the district.

Tex. Water Code § 54.016 (a)

Annexation

- **What is annexation?**
 - **The process of bringing real property into the corporate limits of a city.**
 - **Primary means for a city to grow, control development, and increase tax base.**
 - **Means for a city to benefit from development occurring in the ETJ.**

<https://ci.buda.tx.us/DocumentCenter/View/5362/Annexation-FAQ-Sheet>

Annexation

- **Why is annexation important?**
 - **Municipality takes ownership of all district facilities;**
 - **Municipality takes over accounts; and**
 - **Dissolution of the district**

District Annexation – HB 347

- Acts 2019, 86th Leg., R.S., Ch. 155 (H.B. 347), Sec. 2.02, eff. May 24, 2019.
- Amended Texas Local Government Code, Chapter 43 & Special District Local Laws Code
- Focused on municipal annexation
- Effective May 24, 2019

Annexation Post HB 347

- **Eliminates ability to unilaterally annex**
- **Removes Tier 1 and 2 cities/counties designations from SB 6**
- **Annexation allowed 4 ways:**
 - **On landowner request (TLGC Ch. 43, Subch.C-3)**
 - **On petition of landowners if less < 200 pop. (C-4)**
 - **On election of voters, if => 200 pop. (C-5)**
 - **Pre SB 6 for narrow types of annexations**

Annexation Post HB 347

- **Exceptions to HB 347 annexation process:**
 - TLGC § 43.0115 (Enclave);
 - TLGC § 43.0116 (industrial district);
 - TLGC § 43.012 (land owned by Type-A municipality);
 - TLGC § 43.013 (navigable streams);
 - TLGC § 43.0751(h) (strategic partnership agreements);
 - TLGC § 43.101 (Municipally Owned Reservoir);
 - TLGC § 43.102 (Municipally Owned Airport); and
 - TLGC § 43.1055 (Roads and Right-of-Ways).

STRATEGIC PARTNERSHIP AGREEMENTS

- **Tex. Loc. Gov't Code § 43.0751**
- **Between City and District**
- **City must hold 2 public meetings before approval**
- **Addresses limited purpose/full annexation**
- **City may impose sales tax at limited purpose phase**

QUESTIONS ?

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