

**Why we cannot become a city now**, by Claude Hunter, November 8, 2007

**Texas Law does not allow us to incorporate (become a city) now. Texas law required us to first obtain permission from Houston and Conroe. Permission we received in House Bill 4109 and Senate Bill 1012, provided conditions that must be followed to complete the process of being free from the threat of annexation and thus be able to incorporate. These conditions do not allow us to incorporate until after May 29, 2014.**

The favorable vote on The Woodlands ballot questions I **and** II on November 6, 2007, allows us to begin planning a process and an election to determine if, after May 2014, the majority of Township Voters want to incorporate. This basic right for us to hold an election to incorporate did not exist in Texas until we validated these two ballot questions. If our voters decide to incorporate, we need appreciable time and money to plan and begin implementation of needed infrastructure. Necessary infrastructure for a city includes, but is not limited to, suitable personnel, municipal land, buildings and equipment. For example, we would need a municipal court system and personnel; a street maintenance facility, equipment and personnel; city police, a police station and jail; and a city hall or other governmental buildings or facilities. And we would need to plan whether or how to include water, sewage and drainage functions now governed by The Woodlands Municipal Utility Districts in Montgomery and Harris Counties. For all of that we need bonding capability which will be available to us as The Woodlands Township, a government entity (special purpose district).

In summary, the time between now and May 2014, when we **can** vote to incorporate under HB 4109, provides us minimal time for the above planning and implementation process.

A brief history of Texas laws concerning incorporation follows:

**1912** - A Texas Constitution **home rule amendment allowed cities over 5000 population to define their own government structure and to assert any power not explicitly denied to cities by state law.** This gave larger Texas cities the right to annex and denied a fundamental American right of government only by consent of the governed. This amendment leaves Texas cities with more "home rule" than cities of any other state in the nation, according to a report by the Advisory Commission on Intergovernmental Relations. Most of The Woodlands is in Houston's or Conroe's extraterritorial jurisdiction and **cannot** incorporate until we have followed all aspects of our mutual agreements.

**1987 - Acts 70th Leg., ch. 149** - States that a community may incorporate if it contains 201 to 4,999 inhabitants. A petition to incorporate such a community must be signed by at least 10 percent of the qualified voters of the community. The Woodlands population exceeds the required number of inhabitants and thus cannot incorporate under chapter 149, even if it were not already in the extraterritorial jurisdiction of neighboring cities.

A brief summary of legislative activities supported by The Woodlands Community Associations to try to change Texas laws to allow us to be free from the threat of annexation and thus be able to incorporate follows:

**1999 - House Bill 2329 76(R)** - by Mowery - **Failed** - Purpose: Cities in Texas have unilateral authority to annex neighboring unincorporated areas without the consent of those who live in areas to be annexed. Because residents to be annexed have no say in the annexation process, or in the process of taxation already in effect in the annexing jurisdiction, annexation may result in taxation without representation. HB 2329 would have granted a majority of residents in an area proposed for annexation the authority to accept or reject the municipality's proposal to annex them. All similar bills later failed, as follows:

**2001 - HB 2200 77(R)** by Mowery, et al. Required a municipality to obtain the consent of an area by a petition before annexing an area. **Failed.**

**2003 - HB 568 78(R)** (similar to above) by Mowery, Eissler, et al. **Failed.**  
**Senate Bill 595 78(R)**, a companion bill by Lindsay & Williams, also **Failed.**

**2005 - HB 323 79(R)** by Mowery, Eissler, et al. **Failed.** Required a municipality to obtain consent of voters in an area to be annexed **and** in the annexing municipality prior to annexation.

**Note:** All the above efforts (HB 2329, 2200, 568, 323 & SB 595) failed due to the fact that essentially all cities in Texas, and the Texas Municipal League, opposed allowing a community within the extraterritorial jurisdiction (ETJ) of a city to be allowed to vote to incorporate. **An entirely different approach was obviously required in order to succeed**

**2007 - Unanimous success was achieved in the 80th Texas Legislature!**

- **Passage of SB 1012** - gave The Woodlands the right to enter into **binding** agreements to avoid annexation. Passed unanimously and signed by Governor.
- **Passage of HB 4109** - gave voters of The Woodlands a means to determine their own future governance. Passed & signed by Governor. **Voter validation of these bills by affirmative vote on Propositions 1 and 2 in November 2007 allows us to begin planning the process so that The Woodlands Township Voters can decide whether or when they wish to incorporate at some time after May 29, 2014.**

**2009 and beyond - We will need to continue to work with the Texas Legislature to change current Texas Law to clarify that we can incorporate at a future population of more than 90,000 residents.** Although HB 4109 seems to indicate that we can after May 29, 2014, concern still remains as to whether 1987 - Acts 70th Leg., ch. 149 prevails or whether we can be an exception at a population far in excess of the 4,999 maximum indicated in ch. 149.

Claude Hunter