

RESOLUTION NO. 2010-06-03

A RESOLUTION OF THE CITY OF WESTON, TEXAS, DECLARING OPPOSITION BY THE CITY COUNCIL OF WESTON, TEXAS TO ORDINANCE 2010-09-01, DISANNEXING THE PECAN FARMS AREA, ORDINANCE 2010-09-02, DISANNEXING THE CR 206 AREA, ORDINANCE 2010-09-03, DISANNEXING THE FM 543 AREA, AND ORDINANCE 2010-04-03, DISANNEXING THE CR 209 AREA; DECLARING THE DISANNEXATION ACTIONS INVALID AND UNLAWFUL; AUTHORIZING THE MAYOR TO PURSUE INVALIDATION OF THE ORDINANCES WITH THE CITY ATTORNEY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Weston, Texas is a Type A general-law municipality located in Collin County, created in accordance with the provisions of Chapter 6 of the Local Government Code and operating pursuant to the enabling legislation of the State of Texas; and

WHEREAS, on February 9, 2010, the then-sitting City Council of the City of Weston wrongfully sought to disannex territory from the incorporated limits of the City of Weston, in contravention to advice from counsel, in violation of the laws of the State of Texas and in breach of the then-council members' fiduciary duty to the City of Weston; and

WHEREAS, for the reasons set forth below the City Council of the City of Weston hereby declares its opposition to Ordinance 2010-09-01, disannexing the Pecan Farms area, Ordinance 2010-09-02, disannexing the CR 206 area, Ordinance 2010-09-03 disannexing the FM 543 area, and Ordinance 2010-04-03, disannexing the CR 209 area, and declares said ordinances to be invalid and unlawful.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF WESTON, TEXAS:**

SECTION 1.

That the City Council of the City of Weston hereby finds that Ordinance Nos. 2010-09-01, 2010-09-02, 2010-09-03 and 2010-04-03 (collectively the “Disannexation Ordinances”), each adopted February 9, 2010, are invalid and unlawful for the following reasons:

1. The Disannexation Ordinances were adopted in violation of Chapter 22 of the Texas Local Government Code.

§22.040(b) of the Texas Local Government Code (“LGC”), entitled “Change of Wards,” provides that: “[t]he 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.” The City of Weston is not divided into wards, however, §22.031(b) of the LGC, entitled, “Composition of Governing Body; Ward System Optional,” provides that “[i]f the municipality is not divided into wards, the governing body consists of a mayor and five aldermen who are elected by the qualified voters of the municipality, *and the provisions of this subchapter relating to proceedings in a ward apply to the whole municipality.*” (*Emphasis added.*) The Disannexation Ordinances were adopted February 9, 2010 and the “municipal election” for the City of Weston was conducted on May 8, 2010; the two dates being less than three months apart. The result is that the Disannexation Ordinances are unlawful on their face and void *ab initio*, and therefore of no legal force or effect.

2. The Disannexation Ordinances were adopted in violation of the Texas Open Meetings Act.

The Disannexation Ordinances purport to disannex from the City approximately 323 acres or 0.56 square miles, *an area which includes approximately 76 homes*. An action of this magnitude is indisputably a matter of significant public interest. Notwithstanding that fact, the February 9, 2010 City Council agenda – at which the Disannexation Ordinances were adopted - stated simply, under a heading entitled “EXECUTIVE SESSION,” that the City Council would “[r]econsider disannexation of Pecan Farms Area, FM 543 area, CR 206 area, and CR 209 area.” The Texas Attorney General has held that: “[i]f the notices posted for a governmental body’s meetings consistently distinguish between subjects for public deliberation and subjects for executive session deliberation, an abrupt departure from this practice may raise a question as to the adequacy of the notice.” Tex. Att’y Gen. Op. No. JC-0057 (1999) at 6. In this case, the prior City Council maintained a practice of distinguishing between subjects for public deliberation and subjects for executive session deliberation and the sudden departure from this practice misled the general public as to the likelihood of any action being taken with respect to the Disannexation Ordinances.

In addition to the foregoing, the language of the posting itself was not sufficiently detailed as to put the public on general notice of the areas of the City that were subject to the Disannexation Ordinances. The language of the posting also suggests that the areas in question had previously been disannexed from the City, by virtue of the City’s use of the term “reconsider,” which was not the case.

In addition, the ordinances that would purportedly effectuate the disannexation of the multiple tracts were not provided to the members of the City Council or made available to the public at the February 9, 2010 City Council meeting. Because the then-sitting City Council had no knowledge of the content and substance of the Disannexation Ordinances they could not have intended to approve the documents that were ultimately executed by the then-Mayor of the City. As a result, the owners of property subject to the Disannexation Ordinances were not afforded legal due process in the adoption of the Disannexation Ordinances.

Also, the disannexation ordinance purporting to disannex the Pecan Farms area contains recitals that were never deliberated or voted on by the City Council; i.e. “the City Council agrees to relinquish any CCN’s [sic] upon the request of the property owners described in “Exhibit A.”” Furthermore, this additional language is not authorized as part of the disannexation process under §43.144 of the LGC.

3. The Disannexation Ordinances were adopted in contravention to the Texas annexation statute, Chapter 43 of the LGC.

The property subject to the Disannexation Ordinances was purportedly disannexed pursuant to §43.144 of the LCG. This section requires that the property subject to disannexation contain “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.” In fact, the property subject to disannexation contains multiple one-acre areas where the density exceeds “three occupied residences or business structures.”

4. The Disannexation Ordinances were adopted in contravention to advice from counsel.

According to City records, the then-City Attorney of Weston informed the former Mayor, both verbally and in writing that the disannexation of the Pecan Farms area was in violation of Chapter 43 of the LGC. On January 12, 2009 the former Mayor was advised by the City Attorney that the Pecan Farms area could not be disannexed in one meeting. Fearful that the former Mayor would conceal the legal risks from the remainder of the Council, the City Attorney also distributed a memo to the entire City Council relaying the legal concerns that were raised with the Mayor. On February 24, 2009, the City Attorney delivered a second memo to the City Council *again* indicating the legal risks associated with disannexing the Pecan Farms area. On July 7, 2009 the former Mayor modified the Pecan Farms disannexation ordinance (prepared by the City Attorney's office) and represented to the City Council that the City Attorney had approved the "revised" forms -- when in fact no such approval had taken place. On July 9, 2009, the City Attorney's office prepared a *third* legal memo regarding the legality of disannexing the Pecan Farms area; the former City Attorney contends that this memo was also concealed from the City Council by the former Mayor. On January 12, 2010 the former Mayor was *again* advised by the City Attorney's office that the proposed disannexation of the Pecan Farms area was in violation of State law. On each occasion the former Mayor disregarded the legal advice of the City Attorney thereby knowingly placing the City at risk of liability, in breach of the former Mayor's fiduciary duty to the City.

In early February 2010, the former Mayor retained the services of a different law firm for purposes of seeking legal advice on matters that included the Disannexation Ordinances. On March 2, 2010, less than a month after retaining this firm, the firm tendered its resignation to the former Mayor and City Council declaring “[w]hether inadvertently or not, it appears I have not been given complete documents to review nor told the full circumstances or sequence of events related to the adoption of the disannexation ordinances.” The resignation letter provides that “[u]nder these circumstances, I have concluded that I am unwilling to continue representing the City of Weston.”

Remarkably, the actions of the former Mayor, including his persistent “shopping” for legal opinions and withholding of facts essential to the rendition of legal advice, resulted in the resignation of at least different three different law firms during a two year period.

5. The Disannexation Ordinances were adopted in violation of council members’ fiduciary duty to the City of Weston.

The Disannexation Ordinances, if valid, will result in a decrease in the City’s annual tax base in excess of 50%; a result that will financially cripple the City of Weston due to the loss in tax base.

In addition, based upon City records and resources, that the Disannexation Ordinances were sought to further the personal ambitions of certain individual council members, who through collusion, sought the disannexation of their own residences from the City in order to avoid the application of the lawful regulations of the City of Weston.

Finally, the Disannexation Ordinances were adopted in contravention to the legal advice rendered by the City Attorney's office and special legal counsel, who repeatedly called into question the actions of the former Mayor and the legality of the Disannexation Ordinances.

Based on the foregoing, it is apparent that the actions of the former Mayor and City Council, in adopting the Disannexation Ordinances, were intended to cause financial hardship to the City of Weston, in breach of the former Mayor and City Council members' fiduciary duty to the City of Weston and its constituents.

**SECTION 2.
EFFECTIVE DATE**

This resolution shall be effective from and after its passage and adoption by the City Council.

RESOLVED AND ENTERED this the 8th day of June, 2010.

CITY OF WESTON

Patti Harrington
Patti Harrington, Mayor

ATTEST:

Leann Olavel
City Secretary

