



May 21, 2021

Texas Ethics Commission
201 E 14th St #10
Austin, TX 78701

Via: opinions@ethics.state.tx.us

Re: The Woodlands Township; Request for Advisory Opinion Regarding TEC review of Communications Relating to a Measure, under Sec. 255.003(e), Elections Code and/or Sec. 571.091, Government Code

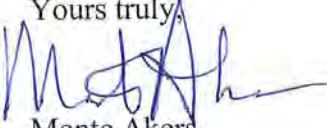
Dear sir or madam:

Messer Fort McDonald is representing The Woodlands Township regarding the potential calling of an election to incorporate the Township as a municipality. The election has not yet been ordered, but may be called for November 2021, and the Board of Directors of the Township desires to take advantage of Sec. 255.003(e), Elections Code in connection with educational materials and communications that will be provided to voters but which must not involve unlawful use of public funds for political advertising.

The Woodlands was founded in 1974 and was legislatively authorized as a special purposes district in 1993 with specific statutory powers, including the authority to incorporate as a municipality or other political subdivision. It is the only "township" in Texas, and it contains more than 100,000 inhabitants. The subject of incorporation has been the matter of discussion, public concern, regional planning, and additional legislation since 1993, and its Board of Directors is determined to fully inform the inhabitants about the incorporation process in an effective, legally compliant manner if the election is ordered.

Due to language in Sec. 255.003(e) limiting its application to "a political subdivision that has ordered an election on a measure," this request for an advisory opinion is also based on Sec. 571.091, Government Code, which does not contain a similar limitation. Assuming the election is called for November by the deadline for doing so in August, the time required to submit election materials and obtain an advisory opinion thereafter but prior to the election is likely to create difficulty in timely circulation of the materials to voters. Accordingly, if at all possible, please review the attached materials for the Commission's consideration at its next quarterly meeting in June.

Please let me know if additional information is desired. Thank you for your consideration.

Yours truly,

Monte Akers

cc: Jeff Jones, Robin Cross

“Draft” Public Education Summary

The Woodlands Township is a “Special Purpose” government district, authorized by state statute. The Township is unincorporated and its boundaries are within both Montgomery County and Harris County, the Extraterritorial Jurisdictions of the City of Houston and the City of Conroe, and primarily within the municipal utility boundaries of 11 Woodlands Municipal Utility Districts (MUDs).

Though the Township governance and administrative model has allowed it to offer municipal types of services, core service areas such as law enforcement and transportation infrastructure maintenance are delivered by county agencies. Water, wastewater, and stormwater management services are provided by multiple Municipal Utility Districts throughout The Woodlands. While the Township has entered into contracted arrangements with the county agencies to provide enhanced law enforcement services, the Township’s authority to direct those services is limited.

In 2018, The Township Board of Directors initiated a study to consider the benefits and impacts of municipal incorporation. This draft study has been completed and the Township Board of Directors is considering placing incorporation on a future general election ballot for consideration by the voters of The Woodlands.

The Township is developing factual public education materials for presentation to potential voters. The following draft summary has been developed to show changes in governmental responsibility and services that would occur with municipal incorporation of The Woodlands.

Government Authority

- **The Woodlands Township**
The Township is a special purpose government district with limited authority and can only establish and enforce rules on property it owns (Township parks, pathways, pools, facilities and recreation centers) in accordance with its enabling legislation.
- **City of The Woodlands**
The city will have municipal powers and authority as provided to a General Law City and can initiate and enforce rules for community standards through establishment of city ordinances (examples – animal control, fireworks, noise violations, tree preservation, street parking, road right of way and utility corridor management authority, law enforcement, etc.) as defined by State Law. If the City were to change to Home Rule, its authority and ordinance-making authority would be broader and defined by its voter-approved City Charter.

Regional Participation Agreement (RPA)

- **The Woodlands Township**

In 2007, The Woodlands Township entered into contractual Regional Participation Agreements (RPAs) with the Cities of Houston and Conroe, which provide that neither city will annex any part of The Township for 50 years. The RPAs were authorized by state statute and subsequently approved by The Woodlands voters who authorized the creation of the Township as it currently exists by approving the boundaries, approving an elected seven member Board of Directors and approving the implementation of an ad valorem property tax levy. Following the voter approval of creation of The Woodlands Township, by agreement, the Community Associations of The Woodlands were dissolved and all services and responsibilities transferred to the Township. The RPA agreements provide that at time of incorporation, the Cities of Houston and Conroe will release the property within The Woodlands Township boundaries from their respective ETJs, meaning that they could no longer annex The Woodlands.

- **City of The Woodlands**

At Incorporation, the Regional Participation Agreements provide that property located within the ETJs of the City of Houston and Conroe and within The Woodlands Township boundaries, would be released from the ETJs of the two cities and become part of the boundaries of the new City of The Woodlands. All properties within the new City of The Woodlands would no longer be subject to annexation by the City of Houston or the City of Conroe.

Uniformity of Local Government Services

- **The Woodlands Township**

Transportation, roadway maintenance, law enforcement, drainage, and development review within The Woodlands fall under the governmental authority of Montgomery County (Precincts 2, 3 and 4), Harris County (Precinct 4), the City of Houston ETJ, the City of Conroe ETJ and the 11 MUDs primarily operating within Township boundaries.

- **City of The Woodlands**

The direct authority for transportation, roadway maintenance and law enforcement is assumed by the city government at incorporation. The city council can, but is not required to, take action to abolish the MUDs and assume operations as a municipal utility at any time, following incorporation. In addition, the new city is removed from the ETJs of the cities of Houston and Conroe, and the role of the two counties is diminished.

Formal Recognition as the Local Government Representing The Woodlands

- **The Woodlands Township**
The Township is not officially recognized as the local government representing Woodlands residents by federal, state or regional planning organizations.
- **City of The Woodlands**
The city would be the recognized as the local government representing the interest of Woodlands residents to all levels of government (federal, state, county, cities and regional planning organizations).

Authority in Regional Planning Matters / Community Standing

- **The Woodlands Township**
With the exception of the Township's public transit services, the Township has no standing in regional planning matters, local roadway transportation planning and other matters such as water and sewer rates, groundwater pumping, subsidence, flooding and stormwater management.
- **City of The Woodlands**
The city would have standing in all of these matters, assuming the MUDs become part of city operations following incorporation. If the MUDs do not become part of city operations following incorporation, the city would still have standing in regional planning matters, local roadway transportation planning and other matters other than the water, sewer and related service provided by the MUDs.

Community Self Governance

- **The Woodlands Township**
Residents of the Township depend on numerous government entities to provide roadway infrastructure maintenance, law enforcement local services, municipal utility operations, develop long range transportation planning and provide development and plat review of projects.
- **City of The Woodlands**
Municipal Incorporation would allow consolidation of these local government services into the city with the exception of the municipal utility district operations. The assumption of municipal utility operations requires action (by ordinance) of the new City Council. The city would gain direct access to potential federal and state funds related to local government services.

Municipal Utilities

- **The Woodlands Township**
Municipal utility services are currently provided to Woodlands residents primarily through 11 Municipal Utility Districts. The MUDs are independent government entities and The Township has no authority over water, wastewater and drainage services in The Woodlands.
- **City of The Woodlands**
Following incorporation, a City Council can opt to enact an ordinance that abolishes the MUDs and assumes all assets, liabilities and operations of the MUDs and operate as a city municipal utility.

Property Tax Freeze for Seniors and Disabled Individuals

- **The Woodlands Township**
The Township is not authorized by state statute to enact a property tax freeze for individuals who are disabled or over the age of 65.
- **City of The Woodlands**
The City Council has the statutory authority to enact a tax freeze for individuals who are disabled or over 65 years of age. The estimated annual cost of enacting this provision is included in the computation of the incorporation maximum initial tax rate.

Municipal Court

- **The Woodlands Township**
The Township does not have statutory authority to create a municipal court to adjudicate local violations. County JP courts handle all traffic violations and miscellaneous county violations and the counties collect revenues from fines and fees.
- **City of The Woodlands**
A city municipal court would adjudicate Woodlands local ordinance violations including traffic citations, and retain and collect fines and fees.

Local Ordinance Making Authority

- **The Woodlands Township**
The Township does not have the ability to create local laws affecting the broader community (ordinance making authority).
- **City of The Woodlands**
A general law city would have the ability to create local laws within the Statutes of the State of Texas (ordinance making authority) to address matters

of community wide concern, such as animal control, fireworks, noise, parking, etc.

Drainage and Flood Mitigation

- **The Woodlands Township**
The Township does not have authority over drainage and drainage planning in The Woodlands. This primary authority is with the two county governments and the Municipal Utility Districts.
- **City of The Woodlands**
The city can establish and enforce drainage standards within the community and initiate projects for drainage improvements. If the city abolishes and absorbs the MUDs, the city gains broader authority over these matters.

Land Use Planning and Plat Approval

- **The Woodlands Township**
The Township does not have authority over land use planning and plat approval for property within The Woodlands. The land area within The Woodlands lies within Montgomery County, Harris County and the Exterritorial Jurisdiction (ETJ) of the cities of Houston and Conroe. These counties and cities have the authority for planning and plat approval.
- **City of The Woodlands**
The city would have authority over land use planning and plat approval in The Woodlands.

Woodlands Covenant Management

- **The Woodlands Township**
The Development Standards Committee (DSC) currently provides covenant administration in The Woodlands and the Township provides staff services to support covenant enforcement.
- **City of The Woodlands**
Provided that The Woodlands does not adopt municipal zoning, the Township's covenant administration process can continue.

Law Enforcement

- **The Woodlands Township**
The Township is prohibited by state statute from directly hiring law enforcement personnel (or creating a police department). The Township chooses to provide

law enforcement services through Township funded contracts with Montgomery County under the supervision on the County Sheriff and Harris County through the Precinct 4 Constable's Office.

- **City of The Woodlands**

The city would be required to provide law enforcement services. The city can establish its own central police department and provide services within the two county areas of The Woodlands, which would allow for a consistent policing philosophy throughout the community. An option would be to create a police department and continue to contract for some law enforcement services.

Transportation Planning

- **The Woodlands Township**

With the exception of the Township's public transit services, the Township does not have authority for roadway transportation planning within the Township boundaries. This authority rests with the cities that have ETJ authority within The Woodlands (Houston and Conroe) and with the overlapping county governments.

- **City of The Woodlands**

The city would have authority for transportation planning within The Woodlands boundaries.

Roadways within The Woodlands

- **The Woodlands Township**

State and County governments have authority for management of the roadways and road right of way in The Woodlands, including roadway expansions and extensions.

- **City of The Woodlands**

The city would assume authority over and responsibility for roadways and rights of way within The Woodlands boundaries, except for SH 242/College Park Drive, which is a State Highway. The city would adopt its own thoroughfare plan.

Traffic Control and Management

- **The Woodlands Township**

County governments have authority for management of traffic lights and speed limits on roadways within The Woodlands, except for SH 242/College Park Drive, which is a State Highway managed by TxDOT.

- **City of The Woodlands**

The city would assume authority for traffic management and would have the ability to establish speed limits within The Woodlands boundaries and could

choose to continue to work with the County or change to local control of traffic light systems. SH 242 is under the authority of TxDOT, and could become subject to a "Municipal Maintenance Agreement" with the city.

Utility/Rights of Way Management

- **The Woodlands Township**
State and county governments have specific but limited authorities for management of the public road rights of way in The Woodlands including utilities in the right of way.
- **City of The Woodlands**
The city would assume authority for the management of the public road rights of way within The Woodlands boundaries and could collect fees from certain types of utilities. The city could pass a right of way management ordinance, which would provide more authority in managing construction and utility installation within the right of way.

County Services Provided in The Woodlands

- **The Woodlands Township**
The County governments determine the level of service to be provided in The Woodlands. County government maintains roadways and right of way within The Woodlands. The County Sheriff has the responsibility to provide law enforcement services in unincorporated areas. The Township pays for enhancements to these two basic county services. In addition, the County provides animal control, environmental health, fire marshal and permitting.
- **City of The Woodlands**
The city would determine and have local control over the level of service to be provided in The Woodlands. The cost of the services would be the responsibility of the city government.

Continuation of Township Services after Incorporation

- **The Woodlands Township**
The current level of service provided by the Township is expected to continue following incorporation.
- **City of The Woodlands**
The current Township services will continue to be provided by the city following incorporation and the city will assume additional responsibilities as a General Law City.

Community Master Planning

- **The Woodlands Township**
With the exception of the Township's public transit services, the Township does not have authority over transportation planning, roadways, water and sewer utilities and drainage. Long-range planning for these services in The Woodlands is the responsibility of various governments and MUDs with boundaries or ETJs that that overlap The Woodlands.
- **City of The Woodlands**
The city would have direct authority to master plan for mobility and transportation, and the ability to assume authority for utilities and drainage (if abolishing the MUDs).

Access to Federal and State Funding

- **The Woodlands Township**
Although the Township has received limited state and federal grant assistance in past years, the majority of state and federal grant programs for local government needs are directed to municipalities. An example is the recent federal funding for pandemic relief in the 2020 CARES Act and the 2021 American Rescue Plan, which was directed to municipalities, counties and state governments.
- **City of The Woodlands**
The city would be eligible to participate in all federal and state funding programs extended to municipalities.

Emergency Authority during Declared Disasters

- **The Woodlands Township**
The Township does not have community-wide emergency authority during declared disasters. Emergency authorities are vested in Federal, State, county and incorporated cities. The Township may participate in Mutual Aid.
- **City of The Woodlands**
The city would have the authority to declare and respond to a local disaster with limited exceptions.

Addressing Future Community Needs

- **The Woodlands Township**
The Township is dependent on at least 15 other entities to provide transportation planning, streets and right-of-way management; law enforcement services; utility services, drainage / flood mitigation; and address community subsidence issues. Changing service needs in The Woodlands

(whether funded by the Township or others) will require approval of the various government entities.

- **City of The Woodlands**

A city government has the statutory authority to act on behalf of the community to directly provide and manage these community service needs.

Plan Review and Building Inspection

- **The Woodlands Township**

The Township performs plan review and limited building inspections per the Covenants and Standards of The Woodlands. Montgomery County and Harris County, along with the City of Houston and City of Conroe through their ETJs, have authority for plan review and building inspections in their respective jurisdictions that overlap The Woodlands Township boundaries.

- **City of The Woodlands**

If the city adopts planning and zoning, the city will have direct authority for a building code including plan review, permitting and building inspections, but cannot directly enforce deed restrictions or covenants.

Enforcement of Community Standards

- **The Woodlands Township**

The Township does not have the authority to enact and enforce ordinances to reflect community standards for issues such as animal control, fireworks, noise violations, street parking, speed limits, tree preservation, right of way management, etc.

- **City of The Woodlands**

The city would have ordinance making authority as authorized for General Law Cities and would have a municipal court for enforcement of local ordinance violations.

Incorporation / Additional Revenue Sources

- **The Woodlands Township**

Township revenues sources include ad valorem property tax, sales tax, hotel occupancy (HOT) tax, cultural arts admissions tax, and user fees. In addition, the Township receives Federal grants for transit service.

- **City of The Woodlands**

Township revenues sources are expected to continue at existing levels. The city would have additional revenue sources such as the alcohol beverage tax, franchise fees, municipal court fees and fines, events admissions tax funding and potentially additional state and federal grant funding (examples: roadway

grants, coronavirus/pandemic relief funds, Community Development Block Grant funding).

Incorporation / Additional Cost to Residents

- **The Woodlands Township**

The current Township property tax rate is ____ cents per \$100 of value.

- **City of The Woodlands**

The maximum initial tax rate to fund additional services following incorporation is estimated to increase the Township tax by ____ cents per \$100 of value. The actual rate can be less but cannot exceed the maximum initial rate. On the average value home this would be approximately \$____ per month.

Steps to INCORPORATION

With the passage of Legislation in 2017, The Woodlands Township Board has the authority to place incorporation on an election ballot for consideration by the voters. Listed below are the steps that the Township Board will consider prior to placing incorporation on the ballot.

START HERE

1

Retain consulting firms



2

Complete law enforcement study

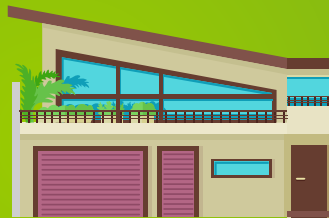


3

Complete road condition analysis and find how much roadways in the city cost to replace and maintain

4

Review MUD water, sewer and drainage operations/ will MUDs become part of city



INCORPORATION

Should the Township incorporate, additional services may include the following:

- Law enforcement services
- Road maintenance
- Road construction
- Traffic management
- Water sewer storm drainage
- Zoning, planning and development services
- Municipal court services
- Public health services

5

Public forum for Township residents



6

Complete financial analysis and estimate cost of services for city operations



Incorporation

If approved by voters, Township becomes incorporated

7

Complete tax rate study / show impact on residents



8

Second public forum

9

Board to consider calling incorporation election

10

If called by Board, residents will vote on incorporation and a maximum initial tax rate



GOVERNANCE Timeline

Governance of The Woodlands has evolved over time as the area has grown from a small master-planned development to a thriving community with a population of 115,000.

1960s

George Mitchell purchases land to build The Woodlands, requests the City of Houston place these landholdings within the city's extraterritorial jurisdiction (ETJ) or annexation area

1974

Official opening of The Woodlands



1996

Kingwood annexed by City of Houston. Community leaders initiate governance discussions

1999

The Woodlands community enters annexation moratorium with City of Houston

2006

Community leaders negotiate deal with City of Houston and City of Conroe to avoid annexation but agreements require legislative changes



2007

Legislation is passed, and voters approve three propositions that enable the community to enter into Regional Participation Agreements (RPAs) with Houston and Conroe to allow The Woodlands to determine its own governance

2010

The Woodlands Township as it currently exists is created with combination of Community Associations of The Woodlands and Town Center Improvement District



2012

Township Board studies Future Governance but defers action

2014

First year voters may consider future governance per RPAs; no election held

2015

Township voters reject Road Bond with Woodlands Parkway Extension

2016

Major thoroughfares added

2017

Hurricane Harvey arrives in Texas

2018

Following Legislation in 2017, Township Board initiates year-long Governance/Incorporation Planning Study

2020

Study continues, but COVID-19 Pandemic hits and puts study on hold



2021

Township Board reopens study



Steps to HOMERULE CITY

From A General Law City



General Law City

1 Township board assumes responsibility of general law city



Changes upon incorporation:

- Roadway and utility rights of way transfer to The Woodlands
- Become eligible for additional state, federal and grant funds (disaster mitigation funding)
- Authority to pass ordinances
- Law enforcement authority
- Becoming voting members of Houston-Galveston Area Council (Federal, state and regional funding board)
- Authority to freeze city taxes for residents 65 years and older and the disabled
- Authority to collect revenue sources as a city (example: municipal court system, fines related to ordinances, traffic tickets and others)
- Permanently ends Houston's and Conroe's rights to annex The Woodlands community

2

Elect initial city council/mayor



3

Home rule charter committee is formed and led by residents



Write home rule charter

4

Public forum to review home rule charter

NO



5

Voters ratify home rule charter



YES



Home Rule City

General Law city

Has no authority to act unless the state legislature gives them the specific authority to do so.

Home Rule City

Derives its authority via a charter election by the voters and has authority to act on any matters unless specifically restricted by state constitution or state statute.

