



**CITY OF TYLER  
CITY COUNCIL COMMUNICATION**

**Agenda Number:** O-2

**Date:** June 19, 2007

**Subject:** Request that the City Council consider adopting an ordinance making an uncontestable finding that all territory included within the City of Tyler since 1986 is part of the City.

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**Item Reference:** Texas Local Government Code Section 41.003 provides that if the City Council adopts an ordinance declaring an area that meets the statutory requirements to be part of the City, that finding is uncontestable

The Local Government Code allows cities to adopt an ordinance declaring areas that have been part of the city for at least 20 years to be declared a part of the city subject to certain conditions. Staff has prepared a map of the annexations through December 1996 for declaration.

This benefit precludes any contest by any party following adoption of an ordinance based on the 20 year annexation map. While the City of Tyler hopes that there will be no dispute with any surrounding municipalities, the City can never be certain that such a dispute will not develop. Such situations are more apt to arise when the City seeks to annex territory, or defines its extraterritorial jurisdiction (ETJ) in a manner that may conflict with planned expansions by other cities. In the context of such controversies, flaws in old ordinances can sometimes be used to challenge the validity of newer annexations that are otherwise valid.

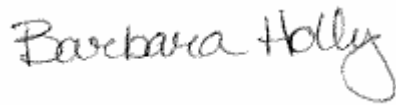
The adoption of this ordinance will, therefore, eliminate some potential challenges to the validity of historical annexation ordinances. The map attached to the ordinance depicts the Tyler city limits as of 1986. The area within this boundary, therefore, (1) has been treated as part of the city for at least 20 years, (2) has been receiving city services for at least that long, (3) has never been found by a court to be outside the city, and (4) is not currently challenged in any lawsuit. Under State statute, if territory meets these four criteria, a city may adopt an ordinance to create an irrebutable presumption that the territory has been part of the City for all purposes. This may, therefore, eliminate one potential avenue of attack should a challenge to Tyler annexations ever be made in the future.

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**RECOMMENDATION:**

It is recommended that the City Council approve the attached ordinance making an uncontestable finding that all territory included within the City of Tyler since 1986 is part of the City.

A handwritten signature in black ink that reads "Barbara Holly". The signature is written in a cursive style with a large, looping 'H' at the end.

**Drafted/Recommended By: Barbara Holly**  
**Department Leader                      Director of Planning**

**Edited/Submitted By:**  
**City Manager**

**ORDINANCE NO. 0-2007-73**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS, ALLOWING FOR THE INCLUSION OF AREA RECEIVING LONGSTANDING TREATMENT AS PART OF MUNICIPALITY PURSUANT TO SECTION 41.003 OF THE TEXAS LOCAL GOVERNMENT CODE BY MAKING AN UNCONTESTABLE FINDING THAT ALL TERRITORY INCLUDED WITHIN THE CITY OF TYLER FOR THE PRECEDING 20 YEARS IS PART OF THE CITY OF TYLER, TEXAS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Texas Local Government Code Section 41.003 provides that an irrebuttable presumption attaches to the inclusion within the city of any area that has been functionally a part of the city for 20 years; and

**WHEREAS**, the records of the City indicate that the area designated in the attached Exhibit “A” has been a part of the City for at least the preceding 20 years; and

**WHEREAS**, the City has provided municipal services, including police protection, to the area and has treated the area as part of the City during the preceding 20 years; and

**WHEREAS**, there has not been a final judicial determination during the preceding 20 years that the area is outside the boundaries of the City; and

**WHEREAS**, there is no pending lawsuit that challenges the inclusion of the area as part of the City;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TYLER, TEXAS:**

**PART 1:** That the findings herein are adopted. The City Council hereby makes the following findings that on the date of adoption of this ordinance:

1. That City records indicate that the area designated in the attached Exhibit “A” has been a part of the City of Tyler for at least the preceding 20 years; and
2. That the City of Tyler has provided municipal services, including police protection, to the area designated in the attached Exhibit “A” and has treated the area as part of the city during the preceding 20 years; and
3. That there has not been a final judicial determination during the preceding 20 years that the area designated in the attached Exhibit “A” is outside the boundaries of the City of Tyler; and
4. That there is no pending lawsuit that challenges the inclusion of the area designated in the attached Exhibit “A” as part of the City of Tyler.

**PART 2:** That as the requirements of Texas Local Government Code Section 41.003(b) for inclusion of the area have been met, the inclusion of the area designated in Exhibit “A” is not contestable, and that the attached Exhibit “A” is hereby adopted and is incorporated as part of this

ordinance.

**PART 3:** That if any provision or and section of this ordinance shall be held to be void or unconstitutional, such holding shall in now way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

**PART 4:** That this ordinance shall be in full force and effect on and after the date of its passage and approval.

PASSED AND APPROVED this 19<sup>h</sup> day of June, 2007.

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JOSEPH O. SEEGER, MAYOR OF THE  
CITY OF TYLER, TEXAS

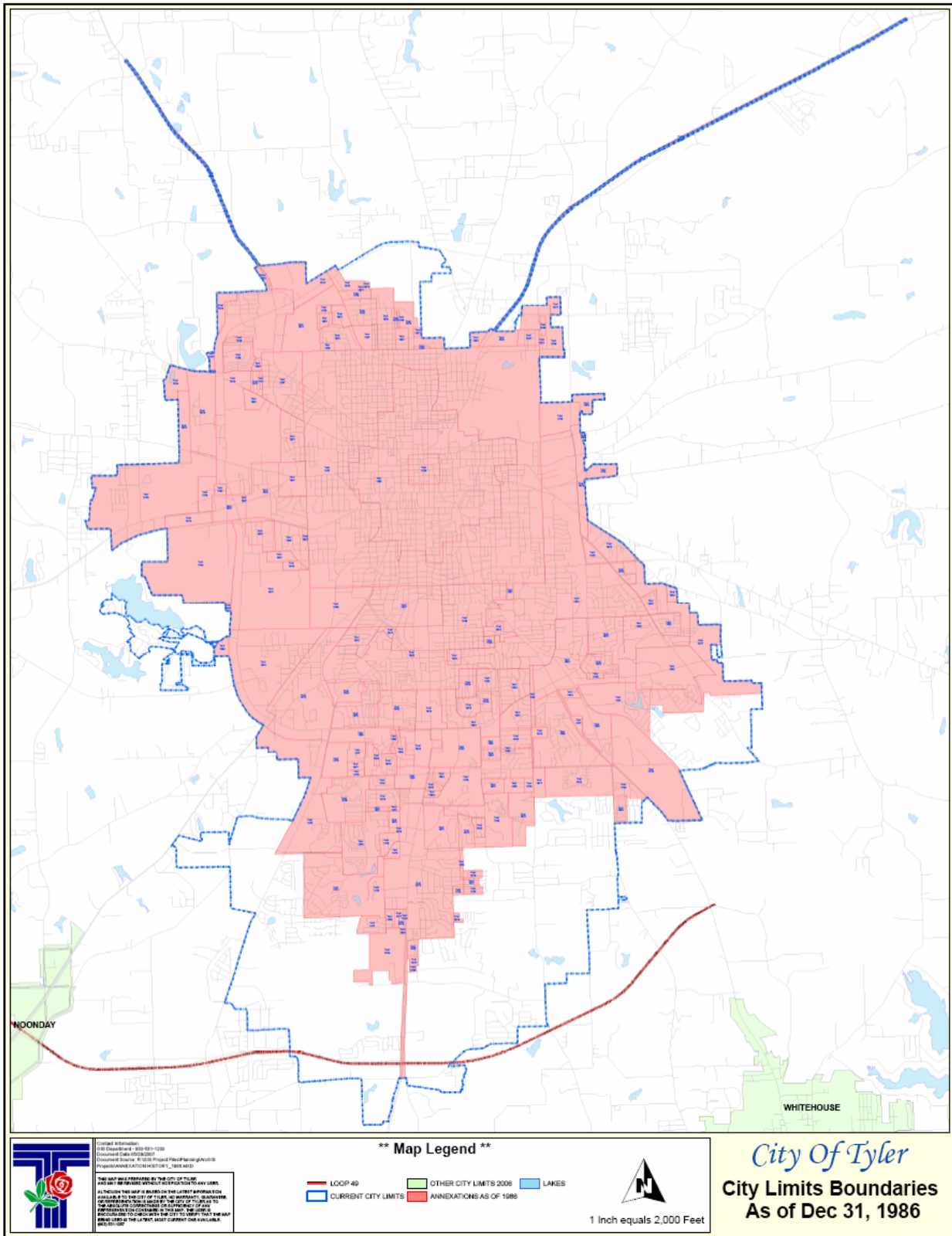
ATTEST:

APPROVED:

\_\_\_\_\_  
CASSANDRA BRAGER, CITY CLERK

\_\_\_\_\_  
CITY ATTORNEY

EXHIBIT "A" TO ORDINANCE 0-2007-73



Contact Information:  
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 www.cityoftyler.com

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 IT INCLUDES THE MAP AS OF THE DATE OF THE LAST REVISIONS  
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