

AN ORDINANCE 100489

APPROVING THE TERMS OF THE SETTLEMENT AGREEMENT BETWEEN THE CITY OF BOERNE AND THE CITY OF SAN ANTONIO RESOLVING ALL ANNEXATION AND EXTRATERRITORIAL JURISDICTION AREA DISPUTES BETWEEN THESE PARTIES OUTLINED IN CAUSE NO. 98-005, CITY OF BOERNE V. CITY OF SAN ANTONIO, IN THE 216TH JUDICIAL DISTRICT COURT OF KENDALL COUNTY, TEXAS; APPROVING THE TERMS OF THE AGREED FINAL JUDGMENT ATTACHED TO THE SETTLEMENT AGREEMENT; AUTHORIZING THE MAYOR AND INTERIM CITY MANAGER TO EXECUTE THE SETTLEMENT AGREEMENT; AUTHORIZING THE CITY ATTORNEY TO EXECUTE THE SETTLEMENT AGREEMENT AND AGREED FINAL JUDGMENT; FINDING THE ORDINANCE TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

* * * * *

WHEREAS, effective on December 31, 1987, and as a result of the passage of its Ordinance No. 66016 on second and final reading on December 10, 1987, the City of San Antonio, Texas ("San Antonio") annexed the certain area adjoining and along the right-of-way of F.M. 3351 (Ralph Fair Road) in Bexar County, Texas and as more specifically described in Ordinance No. 66016; and

WHEREAS, on or before December 28, 1987, and upon the voluntary written request of numerous property owners in Bexar, Comal and Kendall Counties, Texas, the City of Boerne, Texas ("Boerne") accepted certain areas and properties into its extraterritorial jurisdiction; and

WHEREAS, as a result of the passage of Ordinance No. 66016, the extraterritorial jurisdiction of San Antonio was extended five (5) miles from its new city limits farther into Bexar County and into Comal and Kendall Counties; and

WHEREAS, as a result of the areas accepted by Boerne into its extraterritorial jurisdiction and the extension of the extraterritorial jurisdiction of San Antonio, the extraterritorial jurisdiction claimed by each municipality overlapped the extraterritorial jurisdiction claimed by the other municipality in certain areas of Bexar, Comal and Kendall Counties; and

WHEREAS, Boerne and San Antonio each disputed the claim of the other municipality that its extraterritorial jurisdiction was valid and first in time in the overlapping areas; and

WHEREAS, Boerne filed a declaratory judgment suit on January 7, 1998 styled and numbered as Cause No. 98-005; City of Boerne (Plaintiff) v. City of San Antonio (Defendant); in the District Court, 216th Judicial District, Kendall County, Texas (the "Litigation") to determine the validity of its extraterritorial jurisdiction in the areas of dispute; and

WHEREAS, the Judge of the 216th District Court of Kendall County, Texas ("trial court") entered a final judgment in the Litigation on May 22, 2000 that established the boundaries of Boerne's extraterritorial jurisdiction effective as of December 28, 1987 and San Antonio appealed such judgment; and

WHEREAS, the Texas Supreme Court later held that certain county roads in Kendall and Comal Counties could not legally be included in Boerne's extraterritorial jurisdiction and remanded the Litigation to the trial court to determine new boundaries for Boerne's extraterritorial jurisdiction in conformity with the judgment of the Texas Supreme Court (as reported in 111 S.W. 3d 22); and

WHEREAS, Boerne and San Antonio were ordered to mediation by order of the trial court entered on November 30, 2004; and

WHEREAS, at mediation, Boerne and San Antonio reached the agreement embodied within the proposed Compromise, Settlement and Mutual Release Agreement ("Settlement Agreement"); and

WHEREAS, the Settlement Agreement is attached hereto as Exhibit No. 1 and incorporated herein for all purposes; and

WHEREAS, under the terms of the proposed Settlement Agreement, Boerne and San Antonio have agreed to submit an agreed Final Judgment (attached to the proposed Settlement Agreement) to the trial court; and

WHEREAS, the map attached as Exhibit "A" to the proposed Settlement Agreement and incorporated therein for all purposes depicts the boundaries of the extraterritorial jurisdictions of Boerne (shown in purple) and San Antonio (shown in orange) within the areas shown in the map and on which Boerne and San Antonio have agreed as a result of the mediation; subject, however, to the adjustment of the boundary for Boerne's extraterritorial jurisdiction for the area inside Box B (outlined in green) on Exhibit "A," such boundary being more specifically depicted and described in Exhibits "B-1" and "B-2" attached to the proposed Settlement Agreement and incorporated therein for all purposes; and

WHEREAS, Exhibits "C-1" and "C-2" attached to the proposed Settlement Agreement and incorporated therein for all purposes specifically depict and describe the boundary of Boerne's extraterritorial jurisdiction for the area inside Box C (outlined in green) on Exhibit "A" attached to the Settlement Agreement; and

WHEREAS, for the areas inside Box B on Exhibit "A" attached to the proposed Settlement Agreement, the extraterritorial jurisdiction of San Antonio abuts the boundary of Boerne's extraterritorial jurisdiction as depicted and described in Exhibits "B-1" and "B-2;" and

WHEREAS, Boerne and San Antonio will request the trial court to approve and adopt their proposed settlement agreement reached in mediation embodied in the proposed Settlement Agreement which includes Exhibits "A," "B-1," "B-2," "C-1," and "C-2" as the Settlement Agreement to be approved and adopted by the trial court; and

WHEREAS, Boerne and San Antonio have agreed to exchange and/or release to the extent necessary to effectuate their agreement, in accordance with Section 42.023 of the Texas Local Government Code, any area previously claimed to be within the extraterritorial jurisdiction of the other party and in order to establish the boundaries of the extraterritorial jurisdictions of Boerne and San Antonio as depicted and described in Exhibits "A," "B-1," "B-2," "C-1" and "C-2" attached to the proposed Settlement Agreement; and

WHEREAS, the establishment of the boundaries for Boerne's extraterritorial jurisdiction in the areas formerly in dispute (a) will result in (i) an exchange of areas of equivalent value between Boerne and San Antonio, (ii) an acknowledgment that Boerne has adequate land use controls to protect any area exchanged, including any environmental resources in such area, (iii) a logical planning boundary, and (b) does not result in any significant negative fiscal impact on the budget of San Antonio; and

WHEREAS, Robert Bruce filed an intervention in the Litigation; and

WHEREAS, Robert Bruce initially filed a notice of nonsuit in the Litigation effectively dismissing himself from the Litigation and then subsequently filed a withdrawal of the notice of nonsuit; and

WHEREAS, Robert Bruce's status as a party in the Litigation is, therefore, unresolved; and

WHEREAS, notwithstanding Robert Bruce's unresolved status as a party in the Litigation, his status does not affect the terms of the proposed Settlement Agreement between Boerne and San Antonio; and

WHEREAS, approval of the terms of the attached proposed Settlement Agreement is in the best interest of the health, safety and general welfare of the citizens of the City of San Antonio;
NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. That the terms of the proposed agreement between Boerne and San Antonio resolving the Litigation as incorporated in the Settlement Agreement attached as Exhibit No. 1 are hereby approved.

SECTION 2. That the terms of the proposed agreed Final Judgment attached to the proposed Settlement Agreement are also hereby approved.

SECTION 3. That the Mayor and Interim City Manager of the City of San Antonio are hereby authorized to execute the attached Settlement Agreement.

SECTION 4. That the City Attorney is hereby authorized to execute the attached Settlement Agreement and agreed Final Judgment.

SECTION 5. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this Ordinance, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

SECTION 6. If any part, section, paragraph, sentence, phrase or word of this Ordinance is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this Ordinance shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

SECTION 7. This Ordinance shall be effective on March 6, 2005.

PASSED AND APPROVED this the 24th day of February, 2005.



M A Y O R
EDWARD D. GARZA

ATTEST: 
ASSISTANT CITY CLERK

APPROVED AS TO FORM: 
City Attorney