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## **Come Hell or No Water: The Story of Sandbranch and the Unincorporated Community Fight for Public Services**

Daeja Pemberton

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# Come Hell or No Water: The Story of Sandbranch and the Unincorporated Community Fight for Public Services

*Daeja A. Pemberton*

## ABSTRACT

Sandbranch is the only unincorporated community left in Dallas County, and the residents of this majority-Black, impoverished community have had their cries for basic necessities—such as clean, running water—largely ignored. With the County and the City of Dallas not remedying the problem so far, there is a question as to who is responsible for providing water and other public services to the community’s eighty residents. As it currently stands, Texas law simply permits local governments to offer assistance to unincorporated communities but does not mandate that affirmative measures be taken to ensure that these communities are provided for. What is the scope of the existing local government laws when it comes to getting public services to unincorporated areas, and what will it take for Sandbranch to finally get the resources it has been fighting to receive for decades?

## ABOUT THE AUTHOR

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## INTRODUCTION

Less than twenty miles from one of America's richest and most populous cities is a tiny community that lives without clean, running water. In fact, for its entire existence of over 140 years, Sandbranch—a predominantly-Black unincorporated community with fewer than 100 residents and located just south of Dallas, Texas—has fended for itself.<sup>1</sup> When its wells were contaminated thirty years ago, residents resorted to carting water by the bottle because their larger, richer neighbor and Dallas County refused to assist them.<sup>2</sup> With “great consistency,” unincorporated communities in the United States have faced a tidal wave of environmental justice issues that often stem from a lack of infrastructure essential to the well-being of a city: water, waste disposal, emergency services, street paving, lighting, flood control, and traffic control.<sup>3</sup> Sandbranch is no exception.

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1. Kirsten West Savali, *Sandbranch, Texas: A Small Community Denied Water for Over 30 Years Fights Back*, THE ROOT (Dec. 14, 2016, 11:49 AM), <https://www.theroot.com/sandbranch-texas-a-small-community-denied-water-for-o-1790858153> [https://perma.cc/E328-EB3C].

2. *Id.*

3. Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. REV. 1095, 1101–02 (2008).

Over the years, the City of Dallas, Dallas County, and the State of Texas, together with local leaders in Sandbranch, have tried to address the problems that have plagued the community for decades to little avail.<sup>4</sup> With efforts being unsuccessful so far,<sup>5</sup> it is imperative that new solutions are explored before the ultimate downfall of yet another vulnerable, marginalized community.

This Comment discusses what duties, if any, the various levels of government in Texas have in providing public services to unincorporated communities, and it makes the claim that while cities and counties may fully comply with their obligations as a legal matter, they fail as a moral matter. As much of the literature about unincorporated communities focuses on California, this Comment also compares California's treatment of unincorporated communities to Texas's. Parts I and II provide background information about Sandbranch and unincorporated communities generally, including their history in the United States, California, and Texas. Part III lays out the legal obligations state and local governments have in providing public services to these communities. Part IV investigates whether these governments have been following through with their obligations. Part V explores possible solutions for providing public services to unincorporated communities. Finally, the Conclusion reiterates the importance of providing public services to unincorporated communities and limiting additional environmental injustices.

## I. BACKGROUND ON SANDBRANCH

In 1878, twelve former slaves established Sandbranch.<sup>6</sup> After traveling from Louisiana to Texas and not being allowed to travel into town, the freedmen settled in an unincorporated area, became sharecroppers, and built their own community.<sup>7</sup> Today, it is home to eighty residents, eighty-seven percent of whom are Black.<sup>8</sup> It is the poorest community in Dallas County, with the average resident earning a little over 700 dollars a month.<sup>9</sup> The average resident

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4. Mark McPherson, *Introducing the Sandbranch Community*, in *CHANGING FACE OF WATER RIGHTS*, Westlaw 2020 TXCLE-CFWR 3.

5. *Id.*

6. Savali, *supra* note 1. There is some conflicting information regarding the actual year Sandbranch was established. McPHERSON, *supra* note 4 (stating that the community was established in the 1940s–1950s).

7. Claudia Heymach, *Sandbranch: A Deep-rooted Community Fights for Water*, STAN. STORYTELLING PROJECT at 08:12, <https://storytelling.stanford.edu/2018/01/24/sandbranch-a-deep-rooted-community-fights-for-water> [<https://perma.cc/V889-ELD9>] (last visited Oct. 27, 2021).

8. Savali, *supra* note 1.

9. Doyin Oyeniyi, *Sandbranch Is Yet Another Poor, Black Community Without Clean Water*, TEXAS MONTHLY (Feb. 2, 2016), <https://www.texasmonthly.com/the-daily-post/sandbranch-is-yet-another-poor-black-community-without-clean-water> [<https://perma.cc/QDZ8-CVK7>]; Richard West, *The Lost Community of Sandbranch*, D MAGAZINE (Sept. 1985), <https://www.dmagazine.com/publications/d-magazine/1985/september/the-lost-community-of-sandbranch> [<https://perma.cc/6ZRA-K2Y3>].

is 68 years old.<sup>10</sup> The community is also only about fourteen miles away from Dallas, Texas, the ninth largest<sup>11</sup> and fifth wealthiest city in the United States.<sup>12</sup> Sandbranch is also Dallas County's last remaining unincorporated community.<sup>13</sup>

Since its creation, Sandbranch has lacked water and sewer systems, trash services, and streetlights; it has also dealt with contaminated water wells.<sup>14</sup> It was not until after 1985 that the Sandbranch community began implementing the infrastructure and services all but synonymous with life in a municipality. Street signs were installed in 1986, emergency services were provided in 1988, community policing began in 1995, streetlights were installed in 1996, and the first community playground was built in 1999.<sup>15</sup>

The community's ongoing problem with obtaining clean water began in 1985, after Dallas County placed a wastewater treatment plant less than three miles away.<sup>16</sup> All of the residents' private water wells, which they relied on for their daily needs, their livestock, and their crops, soon became contaminated.<sup>17</sup> While government entities attributed the contamination to the livestock in Sandbranch—and refused to fault the operation of the wastewater treatment plant—the community did not believe the livestock was capable of causing such widespread contamination.<sup>18</sup> Because the City of Dallas and other nearby municipalities did not help supply water to Sandbranch, the residents had to purchase bottled water instead.<sup>19</sup>

“We have kids with no water. We're like a Third World country, and I don't say that loosely,” Reverend Eugene Keahey, former pastor of Mount Zion Baptist Church in Sandbranch—the community's “beating heart”—said.<sup>20</sup> In addition to founding a nonprofit organization geared toward

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10. Savali, *supra* note 1.

11. John Egan, *Texas Could Be Home to 4 of Country's 10 Largest Cities in 2021, Expert Says*, CULTUREMAP (June 23, 2020, 9:33 AM), <https://houston.culturemap.com/news/city-life/06-22-20-4-texas-cities-largest-us-in-2021-houston-austin> [<https://perma.cc/VEQ6-BZH4>].

12. *Supporting the Sand Branch Community*, MCPHERSON L. FIRM, PLLC, <https://www.texasenvironmentallaw.com/how-we-give-back/sandbranch-community> [<https://perma.cc/ARS9-LWZA>] (last visited Oct. 27, 2021).

13. *Id.*

14. Oyeniyi, *supra* note 9; Oliver Milman, ‘America's Dirty Little Secret’: The Texas Town That Has Been Without Running Water for Decades, THE GUARDIAN (Nov. 23, 2017), <https://www.theguardian.com/us-news/2017/nov/23/texas-town-without-running-water-sandbranch> [<https://perma.cc/EH6M-M7TN>] (last modified Jan. 24, 2018, 11:32 AM); MCPHERSON, *supra* note 4.

15. *About Sandbranch*, SANDBRANCH . . . EVERYBODY'S COMMUNITY!, <https://sandbranch.everybodyscommunity.org/about> [<https://perma.cc/E3ZC-9F4N>] (last visited Oct. 27, 2021).

16. Paul D. Reynolds et al., *A Qualitative Study of an Environmental Justice Fight in a Freedman Community: A Content Analysis of Sand Branch, Texas*, 11 J. THEORETICAL & PHILOSOPHICAL CRIMINOLOGY 133, 137 (2019).

17. *Id.*

18. *Id.*

19. *Id.*

20. Savali, *supra* note, 1.

increasing self-sufficiency and community development in Sandbranch, Reverend Keahey led the community in its fight to obtain municipal services until his death in 2019.<sup>21</sup> He not only played a pivotal role in making the struggles of his community known to local government officials, but he also gave hope to residents who have been without clean running water for decades that conditions would improve.<sup>22</sup>

Mark McPherson, an attorney who has provided pro bono legal services to Sandbranch since 2016, identified the community's classification as a floodplain as one of the barriers to obtaining funding for public services.<sup>23</sup> In 1985, Dallas County mandated its own floodplain regulation under the Federal Emergency Management Agency (FEMA)'s National Flood Insurance Program (NFIP).<sup>24</sup> The regulation placed limits on the construction of new structures in floodplains, including Sandbranch.<sup>25</sup> The regulation required structures that were situated after the adoption of the regulation to comply with certain specifications; structures situated before the adoption of the regulation were "grandfathered" in.<sup>26</sup> Between 1985 and 2000, Dallas County had allowed a total of seventy new structures to be built in Sandbranch, violating its floodplain regulation and the NFIP.<sup>27</sup>

In 2000, Dallas County received a \$400,000 grant from the Texas Water Development Board to investigate and create a plan to solve Sandbranch's water problem.<sup>28</sup> Shortly thereafter, FEMA noticed Dallas County violated the NFIP by allowing the construction of new buildings in Sandbranch; FEMA threatened to disqualify the County from the NFIP if it did not enforce its floodplain regulation.<sup>29</sup> Thereafter, to come into compliance with the regulation, FEMA gave Sandbranch residents various options for how they could proceed: build a levee to protect the community, elevate their homes above flood levels, move their homes to an area outside the floodplain, or destroy their homes. Despite the drastic nature of these options, the residents were only given thirty days to come into compliance.<sup>30</sup> With FEMA leaving Sand-

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21. *Id.*; Courtney Collins, *Trying to Make Sense of Tragedy in a Community with No Running Water*, KERA NEWS (May 8, 2019, 10:08 AM), <https://www.keranews.org/news/2019-05-08/trying-to-make-sense-of-tragedy-in-a-community-with-no-running-water> [https://perma.cc/HA7E-DP3W].

22. See Savali, *supra* note 1.

23. McPHERSON L. FIRM, PLLC, *supra* note 12.

24. McPHERSON, *supra* note 4.

25. See *id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. Savali, *supra* note 1.

branch residents with little choice but adjust<sup>31</sup> or move, some believed that the floodplain classification was being used “as a tool to destroy the community.”<sup>32</sup>

After FEMA’s ultimatum to the Sandbranch community, Dallas County created the Dallas County Optional Sandbranch Relocation Assistance Program in 2005.<sup>33</sup> This buyout program provided funding for thirty-six families to relocate, but after those families paid home demolition fees, they were only left with \$350 each to move from Sandbranch—this was not enough for a family to afford even a month’s worth of rent.<sup>34</sup> Mr. McPherson described the County’s efforts as “nothing short of a government housing grab that duped vulnerable citizens into giving up their mortgage-free homes for a pittance.”<sup>35</sup>

## II. BACKGROUND ON UNINCORPORATED COMMUNITIES GENERALLY

This Part defines what an unincorporated community is, discusses the characteristics of these communities, and gives some historical background regarding their creation in the United States, California, and Texas.

### A. *Definitions and Demographics*

Unincorporated communities are communities within unincorporated areas that do not have a municipal government and therefore fall under the immediate jurisdiction of the county in which they are located.<sup>36</sup> There are some instances where nearby municipalities govern unincorporated areas; these local governments exercise this authority through extraterritorial jurisdiction (ETJ).<sup>37</sup> The Texas Legislature uses ETJ “to promote and protect the general health, safety, and welfare of persons residing in and adjacent to the municipalities.”<sup>38</sup>

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31. The floodplain classification actually prevented residents from making improvements to homes built before 1980. NAT’L ENV’T JUST. ADVISORY COUNCIL, SUMMARY OF THE MEETING OF THE NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL 13 (2016), <https://www.epa.gov/sites/production/files/2017-10/documents/october-2016-nejac-meeting-summary.pdf> [<https://perma.cc/CB7X-XJ36>].

32. Savali, *supra* note 1.

33. *Id.*

34. Reynolds et al., *supra* note 16, at 137.

35. Savali, *supra* note 1.

36. Anietie Maureen-Ann Akpan, *Tierra Y Vida: How Environmental Injustice Has Adversely Impacted the Public Health of Rural Brown Populations in South Texas*, 43 TEX. ENV’T. L.J. 321, 327 (2013).

37. 52, TEX. JUR. 3D *Municipal Corporations* § 41 (2021).

38. TEX. LOC. GOV’T CODE ANN. § 42.001 (West 2020).

Unincorporated communities exist across the country in states such as California,<sup>39</sup> Louisiana,<sup>40</sup> North Carolina,<sup>41</sup> and Texas. These communities are spread out geographically across the United States, exist in large numbers, and are located in rural as well as urban settings.<sup>42</sup> According to a study by Michelle Anderson—one of the more in-depth studies looking into the plight of unincorporated residents—unincorporated urban areas (UUAs) are unincorporated low-income, residential areas adjacent to a city’s municipal borders or within a city’s “sphere of influence” or ETJ.<sup>43</sup> UUAs tend to be predominantly Black or Latino.<sup>44</sup> While Sandbranch may not be in an unincorporated *urban* area as Anderson defines the term, its demographic make-up is similar to that of UUAs; it also suffers from many of the same issues as the UUAs highlighted in Anderson’s study.<sup>45</sup>

Not all unincorporated communities are low-income or mainly made up of racial minorities. For example, Los Angeles County’s unincorporated community of Lake Sherwood has a mean household income of \$310,550 and is 86.5 percent white.<sup>46</sup> In Texas, the unincorporated community of Cypress, which is under Houston’s ETJ, is among the wealthiest areas near Houston;<sup>47</sup> according to the latest estimate, Cypress is also about 52 percent white.<sup>48</sup> By being particularly well-off, these unincorporated communities typically do not suffer the same fate as their disadvantaged counterparts.<sup>49</sup>

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39. Tony LoPresti, *Reclaiming the Authentic Future: The Role of Redevelopment in Unincorporated California*, 44 URB. LAW. 135 (2012); Camille Pannu, *Drinking Water and Exclusion: A Case Study from California’s Central Valley*, 100 CAL. L. REV. 223 (2012).

40. Julie Schwartzwald Meaders, *Health Impacts of Petrochemical Expansion in Louisiana and Realistic Options for Affected Communities*, 34 TUL. ENV’T. L.J. 113, 134 (2021).

41. Anderson, *supra* note 3.

42. *Id.*

43. Anderson, *supra* note 3, at 1101.

44. *Id.*

45. These issues include a lack of water, sewer, and wastewater systems, emergency services, and road management, *id.*, all of which I will discuss later in the Comment.

46. *The 27 Richest Neighborhoods in Southern California*, MACAIR, <http://macairinc.com/blog/the-27-richest-neighborhoods-in-southern-california> [https://perma.cc/GT2M-F3NX].

47. Cypress zip codes 77433 and 77429 ranked as the seventeenth and twentieth wealthiest Houston-area zip codes, with median yearly household incomes of \$109,084 and \$107,072, respectively. Margaret Barrientos, *Beyond the List: Houston’s Wealthiest ZIP Codes Show More Homeowners Than Renters*, HOUSTON BUS. J. (Nov. 12, 2020, 12:31 PM), <https://www.bizjournals.com/houston/news/2020/11/12/wealthiest-zip-codes-show-more-homeowners.html> [https://perma.cc/UE98-WUFG].

48. *Cypress, TX Demographic Data*, NEIGHBORHOOD SCOUT, <https://www.neighborhoodscout.com/tx/cypress/demographics> [https://perma.cc/3YQD-WM9A].

49. Joe Mathews, *In California, We Are All Unincorporated Now*, MODESTO BEE (Nov. 6, 2020, 5 AM), <https://www.modbee.com/opinion/opn-columns-blogs/article246987942.html> [https://perma.cc/7QMP-AXHA]; Bernice Yeung, *Unincorporated Communities Lack Basic Services*, SFGATE (Apr. 7, 2012), <https://www.sfgate.com/news/article/Unincorporated-communities-lack-basic-services-3465042.php> [https://perma.cc/4KAA-DG29].



Some people purposefully choose to live in unincorporated areas over cities. Despite having a harder time getting public services, some residents of these areas have listed flexibility in property development, less traffic, lower taxes, and being free from the rules and regulations that come with city life as reasons for moving to an unincorporated community.<sup>50</sup>

With these definitions, demographics, and characteristics in mind, this Comment focuses on low-income, minority unincorporated communities, as these are the types of unincorporated communities that more often deal with a lack of public services,<sup>51</sup> like Sandbranch.

### B. *Historical Background and Issues*

Many unincorporated communities were established fifty to one hundred years ago as a way for minorities to escape racial segregation and achieve economic independence.<sup>52</sup> However, although racial minorities established these communities to try to escape racial segregation and exclusion, they were unable to escape racism, as counties' claims that unincorporated communities were a "drain on county services" was used to justify their purposeful denial of basic services.<sup>53</sup> Perhaps it is because of this viewpoint that some counties have continued to deliberately deprive these communities of infrastructure vital to a thriving community—and even to human life.<sup>54</sup> For example, officials in Tulare County, California, previously reasoned that its low-income unincorporated communities having no "authentic future" warranted the county's systematic deprivation of infrastructure improvements in the hopes of "forc[ing] residents away."<sup>55</sup>

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50. Sally Grace Holtgrieve, *Wide Open Suburbia: The Pros and Cons of Living in Unincorporated Communities in Western Travis County*, COMMUNITY IMPACT NEWSPAPER (Nov. 14, 2018, 12:00 PM), <https://communityimpact.com/austin/lake-travis-westlake/city-county/2018/11/14/wide-open-suburbia-the-pros-and-cons-of-living-in-unincorporated-communities-in-western-travis-county> [<https://perma.cc/7JFR-3XKN>].

51. Anderson, *supra* note 3, at 1101–02.

52. *Id.* at 1097.

53. "Through intentional practices of withholding essential infrastructure services, including water and sewer services, Valley counties sought to 'starve out' unincorporated communities of color [from the lack of] public support." Pannu, *supra* note 39 at 232.

54. "A historical examination of remote [disadvantaged unincorporated communities] lays bare uncomfortable and painful histories in which elected officials and government employees used the deprivation of essential infrastructure—including drinking water—to subordinate low-income communities of color." Camille Pannu, *Bridging the Safe Drinking Water Gap for California's Rural Poor*, 24 HASTINGS ENV'T. L.J. 253, 259 (2018). "People of color have historically been perceived as more expendable than their Anglo counterparts; lack of environmental regulation in their communities is a clever guise of a racialized form of institutionalized oppression, which only further bolsters that historical narrative." Akpan, *supra* note 36, at 335.

55. LoPresti, *supra* note 39, at 135–36.

Unincorporated communities tend to lack the kind of public services that are widely available in incorporated municipalities.<sup>56</sup> Among the most important public services are water systems and infrastructure. Aside from the obvious health implications of not having access to safe drinking water, lacking water infrastructure is also a barrier to economic development.<sup>57</sup> Because water is vital to building housing and creating new jobs, a lack of water limits the potential growth of an unincorporated community and prevents residents from investing in industries that could help breathe life into the local economy.<sup>58</sup> Other basic infrastructure that tends to be missing or significantly underdeveloped includes “paved roads and streetlights, sidewalks and storm drains, parks and recreation spaces.”<sup>59</sup>

### 1. California

Certain unincorporated communities in California are known as “disadvantaged unincorporated communities” (DUCs), and they are both well-studied and the focus of this Comment. The California Legislature defines DUCs as “fringe, island, or legacy communit[ies] in which the median household income is 80 percent or less than the statewide median household income.”<sup>60</sup> Sandbranch would qualify as a DUC if it were located in California.<sup>61</sup> “Remote” DUCs are those that are more than three miles away from a city’s borders.<sup>62</sup> Sandbranch would also qualify as a remote DUC.<sup>63</sup>

Most remote DUCs are a product of economic expansion.<sup>64</sup> Some initially served as train depots or river ports before they were closed or abandoned, while others were freedom colonies for Black Americans.<sup>65</sup> Despite

56. Anderson, *supra* note 3, at 1101–02.

57. Pannu, *supra* note 39 at 236.

58. *Id.*

59. LoPresti, *supra* note 39, at 136.

60. An unincorporated fringe community is “any inhabited and unincorporated territory that is within a city’s sphere of influence,” an unincorporated island community is “any inhabited and unincorporated territory that is surrounded or substantially surrounded by one or more cities or by one or more cities and a county boundary or the Pacific Ocean,” and an unincorporated legacy community is “a geographically isolated community that is inhabited and has existed for at least 50 years.” CAL. GOV’T CODE § 65302.10 (West 2020).

61. With an average monthly income of about \$721 in 2016, Oyenyi *supra* note 9, Sandbranch households fell well below 80 percent of Texas’s median household income level in the same year, reaching only about 15.5 percent of that figure, *see* Alexa Ura & Annie Daniel, *Incomes Continue to Rise, But Texans of Color Still Seeing a Gap*, THE TEX. TRIBUNE (Sept. 12, 2017, 12 AM), <https://www.texastribune.org/2017/09/14/incomes-continue-rise-texans-color-still-face-gap> [<https://perma.cc/D5Y4-T6AG>]. Sandbranch has also existed for about 140 years and would therefore qualify as a legacy DUC were it located in California, per that state’s laws. Savali, *supra* note 1.

62. Pannu, *supra* note 53, at 256 n.18.

63. Sandbranch is fourteen miles away from Dallas. *Supporting the Sand Branch Community*, *supra* note 12.

64. Pannu, *supra* note 53, at 257.

65. *Id.* at 257–58.

initially reaping the benefits of economic growth, residents in DUCs began experiencing a lack of economic opportunity, which, along with practices like exclusionary zoning and redlining, caused these areas to become “loci for concentrated rural poverty.”<sup>66</sup> The most prominent problem that remote DUCs face today is contaminated water, and some of these communities can trace the fault back to the California Legislature’s disinvestment in these areas.<sup>67</sup> Aside from the lack of access to clean water, unincorporated communities in California also face inadequate wastewater disposal, slow emergency service response times, “undesirable” land uses (including landfills, sewage treatment plants, utility plants, and chemical plants), and a continued stymie in economic development.<sup>68</sup>

## 2. Texas

As with the DUCs in California, the literature tends to focus on a subset of unincorporated communities in Texas known as “colonias.”<sup>69</sup> Colonias are “rural communities located within 150 miles of the US-Mexican Border,” and the majority are unincorporated.<sup>70</sup> Colonias first came about in the 1950s as an affordable housing option for low-income families.<sup>71</sup> Since developers established these communities in unincorporated areas that lacked governmental supervision, properties typically did not have an adequate sewage system, electric wiring, and other basics.<sup>72</sup> Because Sandbranch shares many characteristics with colonias—being located in an unincorporated area, having a primarily racial minority population, being impoverished, and lacking infrastructure and public services—some have called Sandbranch a “non-border” colonia.<sup>73</sup>

Like other unincorporated communities throughout the rest of the United States, colonias have also faced significant challenges in securing safe water infrastructure and other public services, such as waste management.<sup>74</sup> Colonias in Texas are described as “cesspool[s] of waste.”<sup>75</sup> Because there is often no waste management programming, residents have to decide between allowing their trash to pile up on their properties or burning it and releasing

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66. *Id.* at 259.

67. *Id.* at 254.

68. Anderson, *supra* note 3, at 1107–12.

69. The California legislature has recognized that its disadvantaged unincorporated communities are also commonly referred to as colonias. S.B. 244, 2011–2012 Leg. (Cal. 2011).

70. Akpan, *supra* note 36, at 322 n.5 (quoting *Facts About Farmworkers and Colonias*, U.S. DEP’T. HOUS. URB. DEV., <http://www.hud.gov/groups/farmwkercolonia.cfm> [<https://perma.cc/5RBE-N2NH>] (last updated Mar. 6, 2008)).

71. Akpan, *supra* note 36, at 322.

72. *Id.* at 322.

73. John Henneberger, *The Present Day Saga on One Texas Non-Border Colonia*, TEX. HOUSERS (July 11, 2008), <https://texashousers.org/2008/07/11/the-present-day-saga-on-one-texas-non-border-colonia> [<https://perma.cc/47BL-GHGN>].

74. Akpan, *supra* note 36, at 325–27.

75. *Id.* at 325.

toxins into the air.<sup>76</sup> Allowing trash to remain can inhibit physically active and healthy lifestyles, and as such may be a notable contributor to the “exceedingly high” obesity rates among children and adults in colonias.<sup>77</sup> Also, the toxic chemical dioxin released through burning the garbage pollutes the “air, food, lakes, and streams” in colonias and can cause breathing irritation.<sup>78</sup>

### III. LAWS GOVERNING LOCAL GOVERNMENTAL DUTIES TO UNINCORPORATED COMMUNITIES

With all of the issues that unincorporated residents face, it is difficult to imagine that the government would not offer assistance. This Part identifies some of the state laws concerning local governments’ authority to provide public services to unincorporated communities, and it highlights case law regarding inadequate public services in these areas.

#### A. *California*

Before diving into the law, it is important to discuss from where local governments in California derive their governing power. Because counties are the only layer of local government for DUCs, county governments are responsible for providing public services to these communities.<sup>79</sup> The two types of counties in California, charter and general law counties, derive their governing powers from different sources. Charter counties derive their power from the state constitution, which allows them to create and enforce their own ordinances unless limited by state law.<sup>80</sup> General law counties derive their power from the California Government Code and are therefore limited by state law.<sup>81</sup>

California cities, unlike those in Texas, cannot have ETJ. Instead, each county’s Local Agency Formation Commission (LAFCo) sets “spheres of influence” for a municipality or special district; it is under these spheres that a city can exercise jurisdiction “in mandatory land use plans, service areas, annexations, and municipal ‘prezoning’ of unincorporated areas.”<sup>82</sup> Accordingly, spheres of influence function similarly to ETJ. Spheres of influence have been used by the California Legislature to help cities address the plight of California’s unincorporated communities. California Senate Bill 244 was passed

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76. *Id.* at 326.

77. *Id.* at 325.

78. *Id.* at 326.

79. Pannu, *supra* note 53, at 261.

80. *Local Governments*, GEORGETOWN L. LIBR., <https://guides.ll.georgetown.edu/c.php?g=275786&p=1838520#:~:text=Cities%20derive%20their%20power%20from,three%20forms%20of%20California%20cities> [<https://perma.cc/N9SK-ES3J>].

81. *Id.*

82. David W. Owens, *Extraterritorial Jurisdiction for Planning and Development Regulation*, UNIV. N.C. SCH. GOV’T (Apr. 2020), <https://www.sog.unc.edu/resources/legal-summaries/extraterritorial-jurisdiction-planning-and-development-regulation> [<https://perma.cc/8C4K-QTZH>].

to compel municipalities to address the problems of nearby DUCs.<sup>83</sup> Under SB 244, cities must identify DUCs within or near their sphere of influence and identify needed infrastructure—including clean water, wastewater, storm drainage, sewer services, and sidewalks—in those communities.<sup>84</sup> Counties are responsible for doing the same for DUCs within their boundaries but not within a city’s sphere of influence.<sup>85</sup> Additionally, while this bill does not require cities to service DUCs, it does require cities to identify potential sources of funding public service extensions.<sup>86</sup>

In terms of California case law, there is evidence of a disconnect between the courts’ understanding of the problem and the significance of providing public services to unincorporated areas, especially when it comes to water. Despite one notable case where a court required the California Department of Public Health to create “a safe drinking water implementation plan” for communities with substandard water quality,<sup>87</sup> there is almost no mention of drinking water in California case law on unincorporated communities.<sup>88</sup> Rural water, which would include water in unincorporated, rural areas, is “almost wholly overlooked” in California state cases.<sup>89</sup> And the cases in which rural water is the topic at hand mainly focus on agricultural irrigation districts, not the “importance of ensuring clean drinking water for rural, non-city residents.”<sup>90</sup>

Despite the apparent disconnect, there are some instances in which residents of unincorporated areas in California have sued municipalities over inadequate public services. In *Committee Concerning Community Improvement v. City of Modesto*, residents from four predominately-Latino neighborhoods in unincorporated areas of California, sued the city of Modesto (“City”) and the county of Stanislaus (“County”).<sup>91</sup> The plaintiffs alleged the City and the County intentionally discriminated against them by not providing adequate public services such as sidewalks, street lights, road maintenance, sewer lines, storm drains, curbs, and gutters.<sup>92</sup> The suit also alleged that emergency response times were slow.<sup>93</sup>

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83. S.B. 244, 2011–2012 Leg. (Cal. 2011).

84. CAL. GOV’T CODE § 56425 (West 2020).

85. *Id.*

86. CITY OF FRESNO, CHAPTER 3 OF THE GENERAL PLAN, URBAN FORM, LAND USE, AND DESIGN, SECTION 3.7, DISADVANTAGED UNINCORPORATED COMMUNITIES 3–66 (2019), <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2019/07/General-Plan-3-Urban-Form-7-19.pdf> [<https://perma.cc/S8FU-6Y7B>].

87. *Newton-Enloe v. Horton*, 124 Cal. Rptr. 3d 310, 319 (Ct. App. 2011).

88. Pannu, *supra* note 39, at 240.

89. *Id.*

90. *Id.* at 241.

91. *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690, 696 (9th Cir. 2009).

92. *Id.* at 696–97.

93. *Id.* at 699.

The appellate court reversed the district court's grant of summary judgment in favor of the defendants for both claims.<sup>94</sup> With respect to the claims regarding the lack of public services, the Ninth Circuit concluded that several actions by the defendants created a question as to whether the City and the County intentionally discriminated against the plaintiffs on the basis of race. These actions included excluding more majority-Latino neighborhoods than majority-white neighborhoods from annexation efforts,<sup>95</sup> which would have made getting public services to the plaintiffs' neighborhoods much easier.<sup>96</sup> Additionally, after hearing evidence of statistically significant differences between emergency services response times of the plaintiffs' neighborhoods and majority-white neighborhoods, the court also found an issue of fact regarding whether there was a "meaningful difference" in these times that would prove that the County intentionally discriminated against the plaintiffs on the basis of race.<sup>97</sup>

### 1. Water, Waste, and Sewage Systems

Laws governing public services in unincorporated areas can be found in the California Government Code, the Health and Safety Code, the Public Utilities Code, and the Streets and Highways Code. In these Codes, there are laws specific to water, wastewater, and sewage systems. Counties, cities, and special districts that provide or intend to provide water or wastewater treatment facilities or services can borrow money to do so. The statutory notes indicate that the legislature implemented this statute with unincorporated communities in mind.<sup>98</sup> If, as a result of some street improvement act, "wells, pumps, dams, reservoirs, storage tanks, channels, tunnels, conduits, pipes, hydrants, meters, or other appurtenances for supplying or distributing a domestic water supply" have been constructed in an unincorporated territory, and the county owns no system that can conveniently furnish water, the county's legislative body can allow "any district, public corporation, mutual utility company, public utility company, private company, or individual" to furnish water in the unincorporated territory.<sup>99</sup>

County sanitation districts, with the consent of a county's board of supervisors, can construct and operate sewage collection, treatment, and disposal works within an unincorporated area; if at least ninety percent of the district's area is unincorporated, and the land to be used for the proposed facility is in an unincorporated territory, the board of supervisors must hold a public

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94. *Id.* at 716.

95. *Id.* at 704.

96. *Id.* at 697.

97. *Id.* at 709.

98. "It is the intent of the Legislature to encourage investment in these [disadvantaged unincorporated] communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities." S.B. 244, 2011–2012 Leg. (Cal. 2011).

99. CAL. PUB. UTIL. CODE § 10205 (West 1951).

hearing and let voters in the unincorporated area decide if they approve of the project.<sup>100</sup> The board of supervisors can impose fees on land in unincorporated communities (and incorporated cities) to fund county waste disposal sites, waste collection, and disposal services.<sup>101</sup>

## 2. Other Public Services

The Codes also address other public services, such as public transportation and road maintenance. The board of supervisors may furnish transportation services in unincorporated areas; the service can be operated by a city or transit district if the governing board of either consents to that operation.<sup>102</sup> The board may also form special road maintenance districts in unincorporated areas when it deems that additional funding is needed to maintain roads and highways in these areas.<sup>103</sup> A California Attorney General's opinion held that road maintenance districts can be created to provide street lights, as well.<sup>104</sup>

### B. Texas

Counties in Texas are generally only able to regulate matters that are "expressly granted or implied" by the Texas Constitution or by statutes.<sup>105</sup> On the other hand, cities with a population greater than 5,000 can adopt a "home-rule charter," which grants a city the full authority to regulate matters except when the state of Texas or the United States expressly limits this power.<sup>106</sup> It therefore follows that counties and cities have differing amounts of authority to handle issues relating to public services in unincorporated areas and ETJs.

Case law where unincorporated communities in Texas have sued to receive public services is almost nonexistent. This is perhaps because, as Sandbranch community leaders have pointed out, the litigation process would be too lengthy for services that are needed immediately.<sup>107</sup> Many cases concerning unincorporated areas focus instead on zoning, building, and housing codes. For example, in *Town of Lakewood Village v. Bizios*, Harry Bizios purchased a lot in the Sunrise Bay Subdivision, an area located within the ETJ of the Town of Lakewood Village ("Town"), Texas, a general-law municipality that did not provide any services to the Subdivision.<sup>108</sup> Although the lot was not within city limits, the Town's ordinances made its building codes enforceable within

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100. CAL. HEALTH & SAFETY CODE § 4741 (West 1986).

101. CAL. GOV'T CODE § 25830 (West 1992).

102. CAL. GOV'T CODE § 26002 (West 1974).

103. CAL. STS. & HIGH. CODE § 1550.1 (West 2009).

104. 14 Op. Cal. Att'y Gen. 115.

105. TISCHLERBISE, BEXAR COUNTY UNINCORPORATED AREA STUDY 3 (2014), <https://www.bexar.org/DocumentCenter/View/4154/Bexar-County-Unincorporated-Area-Study-December-2014?bidId=> [<https://perma.cc/AVP6-DWSM>].

106. *Id.*

107. NAT'L ENV'T JUST. ADVISORY COUNCIL, *supra* note 31, at 27.

108. *Town of Lakewood Vill. v. Bizios*, 493 S.W.3d 527, 529 (Tex. 2016).



its ETJ.<sup>109</sup> Bizios obtained the permits required by Denton County, the Federal Emergency Management Agency, and Sunrise Bay's architectural review committee to build a house on the lot.<sup>110</sup> However, because Bizios did not obtain building permits from the Town, it ordered Bizios to stop construction. He refused, and the Town filed suit against him.<sup>111</sup>

The Texas Supreme Court ruled that the Texas Local Government Code neither expressly nor impliedly grants general-law municipalities the power to enforce their building codes within their ETJs.<sup>112</sup> This decision was a win for proponents of private property rights in unincorporated areas, like Bizios, but it concerned general-law municipalities that viewed the authority to enforce their building codes within their ETJs as a way to protect the health and safety of residents within or near city limits.<sup>113</sup>

There are also cases about the steps unincorporated communities must take for incorporation. In *Friendship Village v. State*, qualified voters in Friendship Village ("Village"), an ETJ of Texarkana, voted to incorporate with the city.<sup>114</sup> Thereafter, although the Village did not seek approval from Texarkana to incorporate, a Bowie County judge certified the Village's incorporation, and the State challenged the judge's decision.<sup>115</sup> The district court ruled that the incorporation was invalid, and the Texarkana Court of Appeals affirmed.<sup>116</sup> Texas law requires written consent from a city's governing body before incorporation can proceed. If an ETJ seeks consent and the city does not grant it, incorporation can still proceed if a majority of the proposed city's resident voters and the owners of at least 50 percent of the land in the proposed city petition the governing body for annexation.<sup>117</sup> If the governing body refuses to annex the proposed city or fails to act within six months of receiving the petition, authorization for incorporation is assumed by default.<sup>118</sup> Once the ETJ gets this authorization, it must initiate incorporation proceedings within six months.<sup>119</sup> Because the Village did not seek written consent for incorporation from the governing body of Texarkana and waited more than nine months after receiving a default authorization to initiate incorporation proceedings, the certification for incorporation was invalid.<sup>120</sup>

Laws addressing public services in unincorporated areas in Texas are primarily found in the Texas Local Government Code and the Texas Health and

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109. *Id.* at 529.

110. *Id.*

111. *Id.*

112. *Id.* at 537.

113. *Id.*

114. *Friendship Vill. v. State*, 738 S.W.2d 12, 13 (Tex. App. 1987).

115. *Id.*

116. *Id.* at 13–14.

117. *Id.* at 14.

118. *Id.*

119. *Id.*

120. *Id.* at 14–15.



Safety Code, and other laws not directly mentioning unincorporated areas but still affecting them are found in the Government Code and the Water Code. The Local Government Code also delineates the extent of a municipality's ETJ.<sup>121</sup> According to the applicable statutes in both Codes and the Texas Constitution, Texas cities generally have more authority to provide public services to unincorporated areas than counties.<sup>122</sup> (When comparing Texas counties to counties in other states, the latter generally have more authority, as well.<sup>123</sup>)

### 1. Water, Waste, and Sewage Systems

There are almost no laws that directly discuss water infrastructure in unincorporated areas. There are, however, laws that grant counties permission to regulate water infrastructure in areas outside of municipal control, which can include unincorporated areas. For example, county commissioners courts have the authority to acquire fresh water “for supplying water to the county’s courthouse or for other county purposes.”<sup>124</sup> Water wells, which are used in unincorporated communities (and were used in Sandbranch before they were contaminated) are also under county control. Counties with populations of at least 1.8 million can regulate the placement of water wells.<sup>125</sup> As far as actually establishing a water system, counties of no more than 10,000 can establish a utility system board. The board is responsible for the management and operation of utility systems, which includes water, wastewater, and solid waste systems, owned or acquired by the county.<sup>126</sup>

There are no laws requiring Texas counties to provide waste management and waste control services to unincorporated areas.<sup>127</sup> Instead, counties have the authority to provide for or contribute to the operation of sewage systems—and water systems—in unincorporated areas within that county.<sup>128</sup> The Health and Safety Code also grants authority to county commissioners courts to regulate the “collection, handling, storage, and disposal” of solid waste.<sup>129</sup> Municipalities can also provide utilities—including water and sewer—outside their boundaries either by (1) purchasing, constructing, and/or operating a utility system or (2) extending their utility lines outside the municipality.<sup>130</sup>

The literature has highlighted some cons regarding the laws’ connection to environmental injustice and environmental hazards. For instance, the Health and Safety Code fails to account for the effects a lack of waste disposal services has on unincorporated areas while prohibiting such services that pose

121. TEX. LOC. GOV’T CODE ANN. § 42.021 (West 2013).

122. TISCHLERBISE, *supra* note 105, at 1.

123. *Id.*

124. TEX. GOV’T CODE ANN. § 1477.053 (West 1999).

125. TEX. LOC. GOV’T CODE ANN. § 240.042(a) (West 2011).

126. TEX. LOC. GOV’T CODE ANN. §§ 563.001, 563.052 (West 2009).

127. Akpan, *supra* note 36, at 327.

128. TEX. LOC. GOV’T CODE ANN. § 562.016(a) (West 2009).

129. TEX. HEALTH & SAFETY CODE ANN. § 364.011 (West 2019).

130. TEX. LOC. GOV’T CODE ANN. § 552.001 (2009).

a threat to public safety and welfare.<sup>131</sup> This effectively leaves these communities with no other choice than to burn their waste, threatening the health of residents and, in turn, defeating the purpose of the statute.<sup>132</sup>

## 2. Other Public Services

Just as with waste management, there are other public services that counties are not statutorily required to provide to unincorporated areas but may if they choose to do so. Many of the statutes that grant counties the authority to provide these services tend to be very detailed or tailored to specific purposes. For instance, regarding public lighting, counties may provide outdoor lighting in unincorporated areas near the McDonald Observatory in west Texas and near military installations.<sup>133</sup>

There are laws that grant county governments the authority to regulate emergency services. Counties may furnish fire protection or provide firefighting equipment.<sup>134</sup> Counties also may adopt infrastructure standards that allow ease of access for emergency vehicles.<sup>135</sup> Aside from emergency vehicles, counties can also provide public transportation. A county commissioners court can contract with a rapid transit authority to provide public transportation to unincorporated communities.<sup>136</sup>

In addition to counties, municipalities can also provide public services to areas outside their borders. A municipal government may undertake improvement projects for its ETJs or other parts of the county. Authorized improvements include the construction or improvement of “distinctive lighting”; sidewalks; roadways; water, wastewater, and drainage facilities; and “special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety.”<sup>137</sup>

## IV. ARE LOCAL GOVERNMENTS FOLLOWING THROUGH WITH THEIR LEGAL OBLIGATIONS?

Now that the relevant laws have been identified, this Part explores whether local governments have been using the authority granted in them to provide public services to unincorporated communities.

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131. Akpan, *supra* note 36, at 327; see TEX. HEALTH & SAFETY CODE ANN. § 364.012 (West 1999).

132. Akpan, *supra* note 36, at 325–27.

133. TEX. LOC. GOV'T CODE ANN. § 240.032 (West 2012).

134. TEX. LOC. GOV'T CODE ANN. § 352.001 (West 1987).

135. TEX. LOC. GOV'T CODE ANN. § 232.0034 (West 2013).

136. TEX. LOC. GOV'T CODE ANN. § 615.023 (West 2009).

137. TEX. LOC. GOV'T CODE ANN. § 372.003 (West 2011).

### A. California

Although the California legislature has recognized the problems of DUCs and put effort into coming up with solutions, DUC residents still lack access to public services. While promising at first glance, SB 244 did little in terms of getting public services to DUCs. According to Stephen Lucas, the Executive Officer of the Butte County LAFCo, the bill was just “another [I] legislative ‘fix’” with no clear direction or objective.<sup>138</sup> Other problems Lucas highlighted with the bill are that the California Legislature did not provide funding for the infrastructure needed in the DUCs—which may conflict with the bill’s legislative intent<sup>139</sup>—and that there was no uniform application of the mandate across the state.<sup>140</sup>

In 2014, the California Legislature took a more assertive approach when it came to improving water infrastructure statewide. It set aside \$745 billion to improve DUCs’ access to clean water.<sup>141</sup> The purposes for this bond are listed in the California Water Code.<sup>142</sup> This bond also came about after California became the first state in country to recognize water as a basic human right.<sup>143</sup> However, several years later, DUC residents (especially those in California’s Central Valley) still do not have access to safe drinking water, referred to by a state water board spokesperson as “liquid gold.”<sup>144</sup>

### B. Texas

With respect to waste management in colonias, the Texas Health and Safety Code may actually encourage residents to burn their trash or risk causing a public nuisance; the Code prohibits “keeping, storing, or accumulating refuse” in an unincorporated neighborhood.<sup>145</sup> But burning household refuse

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138. STEPHEN LUCAS, DUCS AND SB244 . . . OUR EXPERIENCE (2016), [https://calafco.org/sites/default/files/resources/2016\\_Annual\\_Conference/SB%20244%20and%20DUCs\\_Lucas\\_web.pdf](https://calafco.org/sites/default/files/resources/2016_Annual_Conference/SB%20244%20and%20DUCs_Lucas_web.pdf) [<https://perma.cc/Y253-GZU9>].

139. See S.B. 244 (“It is the intent of the Legislature to encourage investment in these communities and address the complex legal, financial, and political barriers that contribute to regional inequity and infrastructure deficits within disadvantaged unincorporated communities.”).

140. LUCAS, *supra* note 138.

141. Pannu, *supra* note 53, at 254.

142. CAL. WATER CODE § 79721 (West 2014).

143. Austin R. Ramsey, *The Great Divide: California Communities Battle for Rights to Water*, THE FRESNO BEE (June 5, 2020, 9:30 AM), <https://www.fresnobee.com/news/local/water-and-drought/article243237701.html> [<https://perma.cc/49P6-PMJ3>]; A.B. 685, 2011–2012 Leg. (Cal. 2012).

144. Ramsey, *supra* note 143.

145. See TEX. HEALTH & SAFETY CODE ANN. § 343.011(a), (b), (c)(1) (West 2015). The Code does, however, allow a county commissioners court to grant a variance or a special exception to a public nuisance classification if such an action would “promote[] justice . . . , not [be] contrary to the public interest, and [be] consistent with the general purpose of Section 343.011.” TEX. HEALTH & SAFETY CODE ANN. § 343.011(a)(1). The court can also grant a variance if the enforcement of Section 343.011 would cause an undue hardship to the

has been made illegal in certain unincorporated areas with planned residential developments,<sup>146</sup> possibly putting some unincorporated residents into a lose-lose situation: they can accumulate trash on their property and risk civil or criminal punishment, or they can burn their trash, risk damaging their health, and still possibly receive civil or criminal punishment.

Texas has tried to assist colonias in other ways. The state created the Colonia Self-Help Program within the Texas Water Assistance Program.<sup>147</sup> The Self-Help Program reimburses political subdivisions and nonprofit organizations that help provide water and wastewater services to a colonia.<sup>148</sup> Additionally, the state legislature has been releasing colonia reports since 2006—the latest one was released in 2014—that track the progress of state-funded programs that assist in providing public services to colonias.<sup>149</sup> The 2014 report highlighted that although there were improvements since the 2010 report was released, several problems remained “substantially the same.”<sup>150</sup> For example, some colonias have continued to rely on the bulk transport of water or the purchase of bottled water because they still lack access to clean running water.<sup>151</sup>

Some counties have conducted their own studies looking into the plight of unincorporated communities not near the Texas-Mexico border, as well. In 2014, Bexar County published the “Bexar County Unincorporated Area Study.” This 439-page report discusses the differences in the legislative authority granted to county and municipal governments in Texas regarding the provision of public services, compares Texas counties to other state counties in that regard, breaks down Bexar County’s revenue for funding public services, and provides recommendations for limiting the constraint on Texas counties’ ability to provide for unincorporated communities.<sup>152</sup>

In recent years, more counties are recognizing the issues involving the lack of public services in unincorporated areas, especially when these areas are expecting or experiencing massive population growth.<sup>153</sup> While this rec-

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resident. *Id.* § 343.0111(a)(2).

146. The law applies to unincorporated areas adjacent to counties with at least 3.3 million people and in which there is a planned community with 20,000 or more acres of land. TEX. LOC. GOV’T CODE ANN. § 352.082 (West 2017).

147. TEX. WATER CODE ANN. §§ 15.951–15.952 (2009).

148. TEX. WATER CODE ANN. §§ 15.953–15.954 (2009).

149. The report focused on colonias in Cameron, El Paso, Hidalgo, Maverick, Starr, and Webb Counties. TEX. OFF. OF THE SEC’Y OF STATE COLONIA INITIATIVES PROGRAM, TRACKING THE PROGRESS OF STATE-FUNDED PROJECTS THAT BENEFIT COLONIAS, Tex. Leg. 84-, Reg. Sess. (2014), <https://www.sos.state.tx.us/border/forms/2014-progress-legislative-report.pdf> [<https://perma.cc/F3H2-LJEW>].

150. *Id.* at 18.

151. *Id.*

152. BEXAR COUNTY UNINCORPORATED AREA STUDY, *supra* note 105.

153. Mike Snyder, *Growth in Unincorporated Areas of Harris County Raises Concern*, HOUSTON CHRONICLE (Jan. 31, 2018, 9:19 PM), <https://www.chron.com/news/houston-texas/article/Challenge-of-unincorporated-area-keeps-growing-12540251.php> [<https://>

ognition does not necessarily have a direct impact on getting public services to unincorporated communities, it does put more city, county, and state officials on notice of this continuing problem, which may prompt more legislative action in the future.

The short answer to the question posed by this Part's title is "yes"—local governments in Texas are following through with their legal obligations because, legally, they are not required to provide public services to unincorporated communities but are simply allowed to do so. Statutes in the Local Government and Health and Safety Codes are riddled with what county commissioners courts and cities with ETJ "may" do, but there are virtually none that point to what they "shall" or "must" do. A closer look at the statutory regime regarding unincorporated areas shows that, under the current laws, local governments essentially have to go above and beyond their bare minimum legal obligations and act voluntarily to furnish public services to these areas. As evidenced by what is happening in the DUCs of California, the colonias of Texas, and Sandbranch, many local governments have failed to do this.

### C. *Sandbranch*

While Sandbranch is still in need of proper water infrastructure, accommodations have been made to provide such infrastructure without Dallas County's help. In 2016, the community established the Sandbranch Development and Water Supply Corporation (SDWSC) and applied to receive federal grant money to hire experts to develop a plan to receive clean water;<sup>154</sup> the SDWSC subsequently received a \$30,000 grant from the U.S. Department of Agriculture.<sup>155</sup> The latest victory came in August 2020 when the Texas Water Development Board approved of \$450,000 worth of financial assistance to the SDWSC. The money will assist Sandbranch in creating a "centralized wastewater collection system to replace existing septic systems" and a "new water distribution system to provide potable water to the area."<sup>156</sup>

Despite making progress in obtaining clean water, Sandbranch continues to have no trash collection service. In the meantime, residents are forced to continue burning their trash outside, similar to what happens in colonias.<sup>157</sup>

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perma.cc/S4MV-RD4P]; Andra Lim, *Travis County Attempts to Guide Surging Growth in Unincorporated Areas*, AUSTIN AMERICAN-STATESMAN (Sept. 25, 2018, 1:52 PM), <https://www.statesman.com/article/20140708/NEWS/307089713> [<https://perma.cc/REF6-XZU6>].

154. *Supporting the Sand Branch Community*, *supra* note 12; Doyin Oyeniyi, *The Struggle for Clean Water Continues for Dallas County's Unincorporated Cities*, TEX. MONTHLY (Aug. 2, 2016), <https://www.texasmonthly.com/the-daily-post/the-struggle-for-clean-water-continues-for-dallas-countys-unincorporated-cities> [<https://perma.cc/9JKS-BJGE>].

155. *Supporting the Sand Branch Community*, *supra* note 12.

156. Sarah Haney, *Texas Water Development Board approves \$450,000 to the Sandbranch Water Supply Corporation (Dallas County) for Water and Wastewater Projects*, TEX. WATER NEWSROOM (Aug. 5, 2020), [https://texaswaternewsroom.org/pressreleases/2020-08-05\\_sandbranch.html](https://texaswaternewsroom.org/pressreleases/2020-08-05_sandbranch.html) [<https://perma.cc/3GCB-APDJ>].

157. Akpan, *supra* note 36, at 325–26.

While this solution may be the only feasible option the residents have, it poses significant health risks.<sup>158</sup>

Despite the shortcomings it has faced, Sandbranch has managed to make progress without the help of Dallas County, the governmental body directly responsible for its welfare. Interestingly, Dallas County does have an entity specifically created to oversee activities in its unincorporated areas: the Department of Unincorporated Area Services (DUAS). DUAS has two divisions, the Development Division and the Nuisance Abatement Division. Each division works with surrounding cities, Dallas County emergency services personnel, the Texas Commission on Environmental Quality (TCEQ), and the U.S. Environmental Protection Agency to “facilitate and monitor activities through the administration of applicable regulations and services within unincorporated areas of Dallas County.”<sup>159</sup> Although DUAS’s website lists a variety of the responsibilities it assumes, this list does not include access to clean water,<sup>160</sup> one resource that has continually proved to be hard to secure for disadvantaged unincorporated residents.

## V. SOLUTIONS

There are a variety of solutions that have been proposed for providing public services to unincorporated communities. These include paying for the extension or creation of such services, annexing unincorporated areas, relocating unincorporated residents, creating political subdivisions, and making legislative changes.

### A. *Pay for the Extension/Creation of Public Services*

The solution that seems the most straightforward is having cities and/or counties simply pay to extend municipal services to unincorporated areas. This solution may be unsuccessful at the county level because county funding is more limited than municipal funding; counties make most of their revenue from property taxes, whereas cities make their revenue from property and sales taxes, utility revenue, and fees.<sup>161</sup> Aside from extending public services directly from a city to an unincorporated area, the city or the county could contract with private developers to install or upgrade the needed infrastructure.<sup>162</sup> This may, however, only be a feasible option for relatively small communities.<sup>163</sup>

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158. Akpan, *supra* note 36, at 326. See *supra* Part II.B.2.

159. *Department of Unincorporated Area Services*, DALLAS COUNTY, <https://www.dallascounty.org/departments/duas> [https://perma.cc/L6Q7-HCMW].

160. *Id.*

161. BEXAR COUNTY UNINCORPORATED AREA STUDY, *supra* note 105, at 1.

162. CITY OF FRESNO, *supra* note 86, at 3–66.

163. “This type of development typically occurs on a limited, site-specific basis and is thus unlikely to address area-wide infrastructure needs within large areas that are nonadjacent to the city limits.” *Id.*

## B. *Annex the Community*

Although controversial, annexation has been discussed as another possible solution. In the context of unincorporated areas, annexation occurs when a municipality extends its borders to include a previously unincorporated area.<sup>164</sup> After annexation, and after residents of the newly annexed community begin paying taxes to that municipality, the residents are legally entitled to receive municipal services such as water and sewage systems, streetlights, and road construction and maintenance.<sup>165</sup> The controversy stems from some cities unilaterally deciding to annex certain areas without the approval of the residents living in those areas.<sup>166</sup>

Annexation was one of the first options Dallas County looked into regarding Sandbranch, and the residents asked the City of Dallas to approve so they could start receiving municipal services.<sup>167</sup> The Dallas City Council ultimately decided not to annex the community because it was going to cost about \$11 million to do so and Sandbranch could only generate \$24,000 in tax revenue, meaning the endeavor was “simply not economically feasible.”<sup>168</sup>

## C. *Fund Relocation Efforts*

Another solution that local governments consider is helping unincorporated community residents move to another area where they can more readily get the public services they lack. Dallas County has twice attempted to relocate Sandbranch residents through a buyout program, with the first attempt occurring in 2005.<sup>169</sup> The County established an additional buyout program in 2016, but residents were skeptical, pointing to the dismal results of the 2005 program<sup>170</sup> and the new program’s buyout price of only a few thousand dollars.<sup>171</sup>

Another problem with this option is that some residents simply do not want to move.<sup>172</sup> Those living in Sandbranch have described the community as the “ideal living arrangement,”<sup>173</sup> and with families having generational ties to the area, it is understandable that some may be reluctant to abandon the community that they for so long have called home.<sup>174</sup>

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164. Julie Polansky Bell, *Municipal Annexation Reform in Texas: How a Victory for Property Rights Jeopardizes the State’s Financial Health*, 50 ST. MARY’S L.J. 711, 714 (2019).

165. Daniel Kramer, *United Voices: An Open Proposal for Smart and Fair Growth in the Central Valley*, 39 ECOLOGY L. Q. 193, 196 (2012).

166. Bell, *supra* note 164, at 714–15.

167. NAT’L ENV’T JUST. ADVISORY COUNCIL, *supra* note 31, at 13.

168. Mark McPherson, *Exhibit 2: Dallas County Report on Sandbranch (July 10, 2009)*, in CHANGING FACE OF WATER RIGHTS, Westlaw 2020 TXCLE-CFWR 3.

169. *See supra* Part I.

170. Reynolds et al., *supra* note 16, at 137.

171. *Supporting the Sand Branch Community*, *supra* note 12.

172. Oyeniyi, *supra* note 154.

173. *Id.*

174. *See id.*



Unless Dallas County or another governmental entity can create a buyout program that provides significantly more money to Sandbranch families that want to relocate, funding relocation efforts is probably not a viable solution.

D. *Create a Political Subdivision*

Another possible solution is the creation of political subdivisions. Texas law allows a city to create a “political subdivision” within an ETJ to help supply water and sewer services, roadways, and drainage facilities if the city’s governing body consents to its creation.<sup>175</sup> There are safeguards in place to protect unincorporated community residents if they support the creation of a political subdivision but the city refuses to consent: qualified voters and land owners in the area of the proposed subdivision can petition the city to provide these services if they refuse to consent to its creation after a certain period of time. Residents of the proposed subdivision can also petition TCEQ if met with further refusal by the city’s governing body.<sup>176</sup>

E. *Make Legislative Changes*

Lastly, perhaps the most arduous option would be to for state legislatures to make changes to local governments’ powers. Bexar County’s report suggested that legislative action is needed to properly provide public services to unincorporated communities in Texas.<sup>177</sup> The report stated that the legislature should grant counties home-rule authority so they can create ordinances that are tailored to the needs of each county’s unincorporated communities.<sup>178</sup> While this would be a step in the right direction, this kind of change will not likely be made until legislatures put unincorporated communities’ lack of access to public services on the forefront of their agendas.

## CONCLUSION

Sandbranch has suffered greatly in the past several decades by no fault of its own. The community has faced and overcome numerous obstacles to get the most essential resources to residents. Issues in Sandbranch like no running water and, more recently, contaminated water wells are longstanding ones. Arguably, it is the local government’s job to ensure all residents have access to clean drinking water, but in Sandbranch’s case, the community itself had to secure its own clean drinking water: It established the Sandbranch Development and Water Supply Corporation and applied for funding to hire experts and install a potable water distribution system.

Just like incorporated cities, some unincorporated communities, particularly disadvantaged ones, rely on their government to provide public services. While some county governments, like those in Texas, are not required by law

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175. TEX. LOC. GOV’T CODE ANN. § 42.042(a) (West 2019).

176. *Id.*, § 42.042(f).

177. BEXAR COUNTY UNINCORPORATED AREA STUDY, *supra* note 105, at 4.

178. *Id.*



to provide essential infrastructure to unincorporated areas, they arguably have a moral obligation.<sup>179</sup> Governments should place more importance on the well-being of their residents than whether they will turn a profit from investing in essential infrastructure or whether they are required by law to make such an investment. This moral duty to provide public services should compel local governments to reconsider or revamp some of the possible solutions discussed in this Comment. If the counties do not step up to fulfil this moral duty, state legislatures should make changes to the law that further enable local governments to care for unincorporated communities.

As there are unincorporated communities in almost every state in the nation,<sup>180</sup> there is a question as to exactly how many Americans are silently dealing with similar struggles. Since the legal literature largely overlooks these issues, I hope that this Comment strengthens the efforts residents of these communities have already taken in their fight for “life, liberty, and the pursuit of happiness.”<sup>181</sup>

For the Sandbranch community, although residents have expressed anger and sadness regarding the environmental injustices they have faced for decades, other emotions resonate strongly as well: trust and anticipation.<sup>182</sup> Despite Sandbranch’s hardships, some community members still place their trust in the government, in God, and in themselves.<sup>183</sup> This sentiment is probably best summed up by Reverend Keahey’s prayer posted on the website of one of Sandbranch’s grassroots organizations:

Pray, if it is God’s will, that:

The Sandbranch Development and Water Supply Corporation is successful in bringing water to Sandbranch,  
 Sandbranch residents are able to remain in their homes without fear of forced removal,  
 Dallas County will re-instate sheriff’s patrols in the neighborhood and prosecute those who illegally dump in Sandbranch,  
 Dallas County will return control of the Sandbranch Community Center to the residents.<sup>184</sup>

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179. “Whether viewed from the perspective of human rights, social justice or economic common sense, the damage inflicted by deprivation in water . . . is indefensible. Overcoming that deprivation is not just a moral imperative and the right thing to do. It is also the sensible thing to do because the waste of human potential associated with unsafe water . . . ultimately hurts everybody.” Pannu, *supra* note 39, at 235 n.61 (quoting UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2006—BEYOND SCARCITY: POWER, POVERTY AND THE GLOBAL WATER CRISIS 30–51 (2006)).

180. LoPresti, *supra* note 39, at 141.

181. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Some scholars have stated that the lack of public services in unincorporated communities could be subject to equal protection claims. Akpan, *supra* note 36, at 332–33.

182. Reynolds et al., *supra* note 16, at 154.

183. *Id.* at 152.

184. *Home, SANDBRANCH . . . EVERYBODY’S COMMUNITY!*, <https://sandbrancheverybodycommunity.org> [<https://perma.cc/2F7E-A2EX>].