



MEMORANDUM

TO: City Council

FROM: Leila Aman, Manzanita City Manager

SUBJECT: Annexation

DATE: December 7, 2021

An area property owner is interested in developing property outside City limits, but connecting the project to City services. Staff anticipates that there will be an increased interest in this type of development in the near future as property owners within the UGB seek to develop and connect to City services.

Because of this interest, the City requested an examination of current annexation provisions within various city planning and development documents. In sum, the City's processes, do not currently address the procedures or criteria that apply to annexations. Therefore, this memo also addresses the options available to the City with respect to future annexations.

Section I of this memorandum outlines the City's options in developing an annexation process. Specifically, Section I discusses the state laws applicable to annexations and examples from other cities.

Section II provides information on the City's laws and regulations that mention annexation, which do not set out a specific process but should be considered when developing its new process.

Section III discusses potential next steps for the City in developing an annexation process.

I. State Law

For background, Oregon Revised Statutes (ORS) Chapter 222 establishes various methods to accomplish annexation. In general, so long as the City complies with ORS Ch. 222, the City has flexibility to choose which of these processes it will allow.

An initial note here, attached to this memorandum are example processes and information about annexation from the City of Florence, Oregon City, and the City of Newberg. As you will see, the processes these cities implement are complex. And there are even more options available under the law than are represented in these codes, for instance contract annexations under ORS 222.115 or ORS 222.173 (discussed further below).

Based on the City's configuration and the ownership and development that is ongoing or anticipated in the UGB

at this time, there are certain processes that may be most efficient. Therefore, for this initial discussion, it may be helpful to work through a series of policy questions with staff considerations and recommendations.

1. May the annexation be initiated by the City or the property owner(s) in the territory to be annexed or both?
 - a. Recommendation: Initiation by either the City or property owner(s).
 - b. Situations in which a property owner may want to initiate an annexation:
 - i. To connect to City services;
 - ii. To develop within the UGB.
 - c. Situations in which the City would want to initiate an annexation:
 - i. Island annexations - Under certain conditions, if the City surrounds an unincorporated property (i.e., an “island”) the island can be annexed through a City referendum. If I read ORS Section 222.750 correctly, an island annexation does not require consent of the affected property owners.
 - ii. Health hazard annexations - Annexation may occur if it would remove an existing health hazard (ORS Section 222.840-915); for example, an area of failing septic systems. This specific example may not be directly applicable to the City as Manzanita does not provide sanitary sewer service; expansion of services would fall on the Nehalem Bay Water Agency. But it could come up in other situations where providing City services, such as water or other facilities, would remove or alleviate the public health concern.
2. Will the City require an annexation application or request as part of a request to connect to City services?
 - a. Recommendation: Require annexation to connect to City services. Oregon City and many other municipalities require a property to annex into the City to receive services.
 - b. Another option would be a contract annexation, essentially a promise to annex in the future in exchange for connecting to City services that is recorded and runs with the land. This is not recommended as it can be complicated to enforce.
3. Will the City address an annexation request by a property owner through a public hearing?
 - a. Recommendation: This should be addressed through the typical land use process—with a hearing before the planning commission and review by the City Council.
 - b. Note: City-initiated annexation would not be subject to the public hearing.
4. Will the City address the annexation concurrently with development applications?
 - a. Recommendation: Allow annexation to be addressed concurrently with other land use
 - b. Keep in mind that the lands within the UGB are already zoned, therefore, property subject to the annexation already has a zoning designation. I would recommend that if a property owner seeking annexation desires a zone change that that be analyzed separately—under a different application.
5. Will the City require a vote from all or some of the voters to annex property?
 - a. Recommendation: No election required (when possible).
 - b. Annexation elections are not required for all annexations under Oregon law and may pose significant expense to the City and/or the property owner seeking annexation.
 - c. A public hearing using a procedure typically applied to land use decisions may be a more appropriate venue for the City to hear and consider legitimate concerns regarding annexation. The City of Florence, for instance, holds two public hearings prior to approving an annexation—

first, before the city's planning commission, and then before the Florence City Council.

d. **Caveat:** Under some circumstances a referendum may be required.

II. The City does not currently have procedures in place to accomplish annexations, but should take its existing laws and policies into account when developing a new process.

As discussed above, to streamline the annexation process we recommend choosing among the various avenues available under Oregon law. This Section provides background information the City should consider when developing that process.

a. Manzanita Comprehensive Plan and Zoning Ordinance

Neither document speaks directly to the annexation process. Plan policies are found under "Urban Growth Area Policies: Manzanita-Tillamook County Joint Management Area" and Policy 1 states the following:

Annexations or changes in the Urban Growth Area shall be carried out with the knowledge and participation of the County and affected property owners, and with adequate findings of fact on the part of both the City and County that the following factors are being considered:

- a. *A demonstrated need to accommodate long range growth consistent with the State goals;*
- b. *A need for housing and employment opportunities;*
- c. *The orderly and economic provision of public facilities and services;*
- d. *Provision for efficiency of land uses within and on the fringe of the existing Urban Area;*
- e. *Consideration of environmental, economic, social and energy consequences;*
- f. *The retention of agricultural land as defined by the State goal, with Class I soils being the highest priority for retention and Class IV the lowest;*
- g. *The compatibility of the proposed uses with nearby agricultural activities;*
- h. *Changes to the Urban Growth Area boundary shall also conform to the procedures and requirements of Goal 2, Part II, exceptions of the LCDC goals and guidelines.*

These are guidelines for establishing or expanding a UGB and do not directly address the matter of annexation. In some cases, new state regulations on housing and economic development supersede these guidelines.

Water Policies are interesting. Policy 3 notes the following:

Monthly service charge rates outside the City limits (but within the Urban Growth Area) shall be higher than inside the City, to offset tax support by City residents. This will offset tax support by City residents for capital improvements to the water system.

This policy appears to encourage services outside the City, or at least not oppose their extension. This may also create a dilemma for the City as water revenues may be reduced upon annexation. It must also be added, that based on team discussions, provisions in Ordinance 90-8, Operation of Water Systems does not address annexation requirements.

Policies related to storm sewer and streets were also examined. In neither case do policies reference annexation or the extension of the services outside City limits.

Finally, the Zoning Ordinance does not contain any references to annexation nor is a process in place to review an annexation request.

b. Intergovernmental Agreement and City Charter

The City entered into an intergovernmental agreement with Tillamook County (Urban Service Boundary Area Joint Service Agreement) to address planning issues within the UGB. Section 5. Annexation reads as follows:

Annexation within the Manzanita Urban Service Area shall be in accordance with the relative annexation procedures under Oregon Law and the policies of the Manzanita Comprehensive Plan.”

As I mentioned previously, annexation procedures must follow Oregon Law, in this case, ORS 222. The Comprehensive Plan does not have annexation guidance.

Regarding the City Charter, there are no provisions which proscribe the method to expand the City limits. Therefore, Council may hear an annexation request as a land use action, require a public vote or both.

III. Proposed Next Steps

As noted, this memorandum was precipitated by a property developer wishing to connect to City services (primarily water) for a subdivision project outside City limits. As of now, the Water System and Zoning Ordinance documents do not address system extension requirements or annexation procedures, respectively. It is suggested the City consider the following:

- A. Ordinance 90-8 – Amend the Ordinance to limit new service connections to properties only within City limits. Property outside City limits will require annexation to be served. This change only requires the City Council to amend Ordinance 90-8; there is no requirement to process this as a land use action.
- B. Ordinance 95-4 – The Ordinance will require a new Section on annexation procedures. Again, the City can require a public vote, address this as a land use action or both. My strong suggestion is to process these as a land use application with hearings before both the Commission and Council. Public votes are expensive, time consuming and can negate all the work involved with establishing the UGB. Examples of Zoning Ordinance language used in other cities are attached for the Council’s consideration.
- C. Other Considerations
 - A. Until the Zoning Ordinance is amended, the City may process an annexation per provisions in ORS 222. The process in ORS 222.120, consent by property owner may be the most efficient here. One other point, while the City may use procedures in ORS 222, it is suggested the Council have buy-in on the process before we accept an application.

TITLE 10
CHAPTER 1

ZONING ADMINISTRATION

SECTION:

- 10-1-1: Administrative Regulations
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- 10-1-2: Use Districts and Boundaries
- 10-1-2-1: Districts Established
- 10-1-2-2: Change of Boundaries on Zoning Map
- 10-1-2-3: Zoning of Annexed Areas
- 10-1-3: Amendments and Changes

10-1-1: ADMINISTRATIVE REGULATIONS:

10-1-1-1: SHORT TITLE: This Title shall be known as the "Zoning Ordinance of the City of Florence", and the map herein referred to shall be known as the "Zoning Map of the City of Florence". Said Map and all explanatory matter thereon are hereby adopted and made a part of this Title.

10-1-1-2: SCOPE: No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located, except as otherwise provided herein. No permit for the construction or alteration of any building shall be issued unless the plan, specifications and intended uses of such building conform in all respects with the provisions of this Title. The zoning regulations are not intended to abrogate, annul or impair easement, covenant or other agreements between parties, except that where the zoning regulations impose a greater restriction or higher standard than that required by such agreement, the zoning regulations shall control.

10-1-1-3: PURPOSE

A. **PURPOSE OF THIS TITLE:** The purpose of this Title is to establish for the City a Comprehensive Zoning Plan designed to protect and promote the public health, safety and welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources. Such regulations are designed to achieve the following objectives:

1. To fulfill the goals of Florence's Comprehensive Plan.
2. To advance the position of Florence as a regional center of commerce, industry, recreation and culture.
3. To provide for desirable, appropriately located living areas in a variety of dwelling types and at a suitable range of population densities, with adequate provision for sunlight, fresh air and usable open space.

4. Protect residential, commercial, industrial and civic areas from the intrusion of incompatible uses, and to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services.
5. To insure preservation of adequate space for commercial, industrial and other activities necessary for a healthy economy.
6. To promote safe, fast and efficient movement of people and goods without sacrifice to the quality of Florence's environment, and to provide adequate off-street parking.
7. To achieve excellence and originality of design in future developments and to preserve the natural beauty of Florence's setting.
8. To stabilize expectations regarding future development of Florence, thereby providing a basis for wise decisions with respect to such development.

B. **PURPOSE OF THIS CHAPTER:** The purpose of this chapter is to establish standard decision-making procedures that will enable the City, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. Table 10-1-1 provides a tool for determining the review procedure and the decision-making body for particular approvals.

10-1-1-4: APPLICATION:

A. Applications and Petitions required by Title 10 and 11 of this Code shall be on forms prescribed by the City and include the information requested on the application form.

B. **Applicability of Review Procedures:** All land use and development permit applications, petitions, and approvals shall be decided by using the procedures contained in this chapter. The procedure type assigned to each application governs the decision making process for that permit or approval. There are four types of approval procedures as described in subsections 1-4 below. Table 10-1-1 lists some of the City's land use and development approvals and corresponding review procedures. Others are listed within their corresponding procedure sections.

1. **Type I (Ministerial) Procedure (Staff Review – Zoning Checklist).** Type I decisions are made by the City Planning Director, or his or her designee, without public notice and without a public hearing. A Type I procedure is used in applying City standards and criteria that do not require the use of discretion (i.e., clear and objective standards);
2. **Type II (Administrative) Review Procedure (Administrative/Staff Review with Notice).** Administrative decisions are made by the City Planning Director, with public notice and an opportunity for appeal to the Planning Commission. Alternatively the City Planning Director may refer an Administrative application to the Planning Commission for its review and decision in a public meeting;
3. **Type III (Quasi-Judicial) Procedure (Public Hearing).** Quasi-Judicial decisions are made by the Planning Commission after a public hearing, with an opportunity for appeal to the City Council; or in the case of a Quasi-Judicial zone change (e.g., a change in zoning on one property to comply with the Comprehensive Plan), a Quasi-Judicial decision is made by the City Council on recommendation of the Planning Commission. Quasi-Judicial decisions involve discretion but implement established policy.
4. **Type IV (Legislative) Procedure (Legislative Review).** Type IV procedures apply to legislative matters. The Legislative procedure applies to the creation or revision, or large-scale implementation, of public policy (e.g., adoption of regulations, zone changes, annexation, and comprehensive plan amendments). Legislative reviews are considered by the Planning Commission, who makes a recommendation to City Council. City Council makes the final decision on a legislative proposal through the enactment of an ordinance.

- C. Except when this Code provides to the contrary, an application or petition regulated by Titles 10 and 11 of this Code:
1. Shall be reviewed by the Planning Director within thirty (30) days to determine if the application is complete, including required drawings, plans, forms, and statements.
 2. Shall identify the public facilities and access which may be needed to support the development, including but not limited to utilities and transportation infrastructure, and how they will be financed.
 3. Shall identify off-site conditions including property lines, utility locations and sizes, existing and future streets, land uses, significant grade changes and natural features such as streams, wetlands and sand dunes for an area not less than three hundred (300) feet from the proposed application site that is one (1) acre or larger and within 100 feet from the proposed application site that is less than one (1) acre in size. (Amd. By Ord. No. 4, Series 2011)
 4. Shall be accompanied by a digital copy or two hard copies of required plans of dimensions measuring 11 inches by 17 inches or less. Costs of document reduction may be passed onto the applicant.
 5. Shall be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Additional information may be required under the specific application requirements for each approval.
 6. Shall be accompanied by any other information deemed necessary by the City Planning Department.
 7. Shall be accompanied by the required, non-refundable fee.
- D. Evidence Submittal: Except when this Code expressly provides different time limitations, all documents and evidence relied upon by the applicant shall be submitted at least thirty (30) days prior to the hearing as provided in Subsection 10-1-1-6. (Amd. by Ord. No. 30 Series 1990)
- E. Traffic Impact Studies:
1. Purpose of Traffic Impact Study: The purpose of a Traffic Impact Study is to determine:
 - a. The capacity and safety impacts a particular development will have on the City's transportation system;
 - b. Whether the development will meet the City's minimum transportation standards for roadway capacity and safety;
 - c. Mitigating measures necessary to alleviate the capacity and safety impacts so that minimum transportation standards are met; and
 - d. To implement section 660-012-0045(2)(e) of the State Transportation Planning Rule.

2. Criteria for Warranting a Traffic Impact Study: All traffic impact studies shall be prepared by a professional engineer in accordance with the requirements of the road authority. The City shall require a Traffic Impact Study (TIS) as part of an application for development; a proposed amendment to the Comprehensive Plan, zoning map, or zoning regulations; a change in use, or a change in access, if any of the following conditions are met:
 - a. A change in zoning or plan amendment designation where there is an increase in traffic or a change in peak-hour traffic impact.
 - b. Any proposed development or land use action that may have operational or safety concerns along its facility(s), as determined by the Planning Director in written findings.
 - c. The addition of twenty-five (25) or more single family dwellings, or an intensification or change in land use that is estimated to increase traffic volume by 250 Average Daily Trips (ADT) or more, per the ITE Trip Generation Manual.
 - d. A change in land use that may cause an increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicle trips or more per day
 - e. The location of the access driveway does not meet minimum sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or such vehicles queue or hesitate on the State highway, creating a safety hazard.
 - f. A change in internal traffic patterns that may cause safety problems, such as backed up onto a street or greater potential for traffic accidents.
 - g. The Planning Director, based on written findings, determines that a TIS is necessary where traffic safety, street capacity, future planned facility, or multimodal concerns may be associated with the proposed development. The City will consider the following criteria when determining the need for a TIS:
 - i. If there exists any current traffic problems, such as high accident location, poor roadway alignment, or capacity deficiency that are likely to be compounded as a result of the proposed development.
 - ii. If it is anticipated the current or projected level of service of the roadway system in the vicinity of the development will exceed minimum standards.
 - iii. If it is anticipated that adjacent neighborhoods or other areas will be adversely impacted by the proposed development.
 - h. A road authority with jurisdiction within the City may also require a TIS under their own regulations and requirements.
3. Traffic Study Requirements: In the event the City determines a TIS is necessary, the information contained shall be in conformance with FCC 10-35-2-5, Traffic Study Requirements.

- F. Initiation of applications:
1. Applications for approval under this Chapter may be initiated by:
 - a. Order of City Council
 - b. Resolution of the Planning Commission
 - c. The City Planning Official or designee
 - d. A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.
 2. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.
- G. Changes in the law: Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

Table 10-1-1 – Summary of Approvals by Review Procedure*

*Not a comprehensive list of City procedures

Approvals**	Review Procedures	Applicable Regulations
Zoning Checklist Review	Type I	Applicants are required to complete a Zoning Checklist before applying for any other permit or approval. See FCC 10-1-1-6.
Access to a Street	Type I	FCC 10-35 and the standards of the applicable roadway authority (City/County/ODOT)
Adjustment	Type II	See FCC 10-1-1-6
Annexation	Type IV	See Oregon Revised Statute 222 & FCC 10-1-3
Code Interpretation	Type I or II	See FCC 10-1-1-6. Routine interpretations that do not involve discretion & do not require a permit.
Code Text Amendment	Type IV	See FCC 10-1-1-6 and 10-1-3
Comprehensive Plan Amendment	Type IV	See FCC 10-1-1-6 and 10-1-3
Conditional Use Permit	Type III	See FCC 10-1-1-6 and 10-4
Agency Review Form	Type I	See FCC 10-1-4 and FCC 10-1-1-6
Flood Plain Permit	Type I	See FCC 10-1-4 and FCC 10-1-1-6
Home Occupation	Type I	See FCC 10-1-4 and FCC 10-1-1-6
Legal Lot Determination	Type I	See FCC 10-1-1-6
Planned Unit Development Preliminary Plan Final Plan	Type III	See FCC 10-1-1-6
Modification to Approval or Condition of Approval	Type I, II, or III	See FCC 10-1-1-6
Non-Conforming Use or Structure, Expansion of	Type II or III	See FCC 10-1-1-6
Partition or Re-plat of 2-3 lots Tentative Plan Final Plat	Type II Type I	See FCC Title 11 See FCC Title 11, FCC 10-1-1-6
Property Line Adjustments, including Lot Consolidations	Type I	See FCC Title 11
Site Design Review	Type II or III	See FCC 10-1-1-6 and FCC 10-6
Subdivision or Replat of >3 lots Tentative Plan Final Plat	Type II Type I or III	See FCC Title 11 See FCC Title 11 and FCC 10-1-1-6
Variance Zoning District Map Change	Type III Type III or IV	See FCC 10-5 See FCC 10-1-1-6 and 10-1-3

** The applicant may be required to obtain building permits and other approvals from other agencies, such as a road authority or natural resource regulatory agency. The City's failure to notify the applicant of any requirement or procedure of another agency shall not invalidate a permit or other decision made by the City under this Code.

10-1-1-5: GENERAL PROVISIONS

- A. 120-Day Rule: The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions – plan and code amendments – without an applicant under ORS 227.178.)
 - 1. The City shall take final action on housing applications meeting the criteria of ORS 197.311 within 100 days.

- B. Consolidation of proceedings: When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.
 - 1. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee.
 - 2. When proceedings are consolidated:
 - a. The notice shall identify each application to be decided.
 - b. The decision on a plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions.
 - c. When appropriate, separate findings shall be prepared for each application. Separate decisions shall be made on each application.

- C. Check for acceptance and completeness. In reviewing an application for completeness, the following procedure shall be used:
 - 1. Acceptance. When an application is received by the City, the City Planning Official or designee shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant.
 - a. The required forms.
 - b. The required, non-refundable fee.
 - c. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.
 - 2. Completeness.
 - a. Review and notification. After the application is accepted, the City Planning Official or designee shall review the application for completeness. If the application is incomplete, the City Planning Official or designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant 180 days from the date that the application was submitted to submit the missing information. Applications which have been deemed incomplete and for which the applicant has not submitted required information or formally

refused to submit additional information shall be deemed void on the 181st day after original submittal.

- b. Application deemed complete for review. In accordance with the application submittal requirements of this Chapter, the application shall be deemed complete upon the receipt by the City Planning Official or designee of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the City Planning Official or designee in section 10-1-1-5-C-2-a, above.
- c. Standards and criteria that apply to the application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time it was first accepted.
- d. Coordinated review. The City shall also submit the application for review and comment to the City Engineer, road authority, and other applicable County, State, and federal review agencies.

D. City Planning Official's Duties. The City Planning Official (Director) or designee shall:

- 1. Prepare application forms based on the criteria and standards in applicable state law, the City's comprehensive plan, and implementing ordinance provisions.
- 2. Accept all development applications that comply with the requirements of this Chapter.
- 3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or non-conformance with the criteria. The staff report and findings may also provide a recommended decision of: approval, denial; or approval with specific conditions that ensure conformance with the approval criteria.
- 4. Prepare a notice of the proposal decision:
 - a. In the case of an application subject to a Type I or II review process, the City Planning Official or designee shall make the staff report and all case-file materials available at the time that the notice of decision is issued.
 - b. In the case of an application subject to a hearing (Type III or IV process), the City Planning Official or designee shall make the staff report available to the public at least seven (7) days prior to the scheduled hearing date, and make the case-file materials available when notice of the hearing is mailed, as provided by Sections 10-1-1-6-1 (Type I), 10-1-1-6-2 (Type II), 10-1-1-6-3 (Type III), or 10-1-1-6-4 (Type IV).
- 5. Administer the hearings process.
- 6. File notice of the final decision in the City's records and mail a copy of the notice of the final decision to the applicant; all persons who provided comments or testimony; persons who requested copies of the notice; and any other persons entitled to notice by law.
- 7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and condition, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information, or documentation that was considered by the decision-maker(s) on the application.
- 8. Administer the appeals and review process.

E. Amended Decision Process.

1. The purpose of an amended decision process is to allow the City Planning Official or designee to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.
2. The City Planning Official or designee may issue an amended decision after the notice of final decision has been issued but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 14 business days after the original decision would have become final, but in no event beyond the 120-day period required by state law. A new appeal period shall begin on the day the amended decision is issued.
3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.
4. Modifications to approved plans or conditions of approval requested by the application shall follow the procedures outlined in section 10-1-1-6. All other changes to decisions that are not modifications under 10-1-1-6 follow the appeal process.

F. Re-submittal of Application Following Denial. An application that has been denied, or an application that was denied and on appeal or review has not been reversed by a higher authority, including the Land Use Board of Appeals, the Land Conservation and Development Commission, or the courts, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least 6 months from the date the final City action is made denying the application, unless there is substantial change in the facts or a change in City policy that would change the outcome, as determined by the City Planning Official or designee.

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-1 TYPE I REVIEWS - MINISTERIAL/STAFF REVIEW AND ZONING CHECKLIST:

A. Type I (Ministerial/Staff Review): The City Planning Director or designee, without public notice and without a public hearing, makes Type I decisions through the staff review (over-the-counter) procedure. Type I decisions are those where City standards and criteria do not require the exercise of discretion (i.e., clear and objective standards). Decisions which require the exercise of discretion must be reviewed as part of procedure which includes public notice. Type I decisions include:

1. Access to a Street
2. Parking Lot Improvements, such as initial surfacing, striping, or changes to accesses or stormwater facilities, but not including parking lot resurfacing or restriping which meets current code requirements.
3. Building fascia changes to include but not limited to additions, substitutions, changes of windows, doors, fascia material, building, roof, and trim colors, awnings,
4. Property Line Adjustments, including lot consolidations
5. Final Plat (Partition or Subdivision)
6. Modification to an Approval or Condition of Approval
7. Legal Lot Determination
8. Home Occupations

9. Hazard Tree Removal

10. A change in the type and/or location of access-ways, drives or parking areas not affecting off-site traffic.
 11. Landscape Plan Modifications that exclusively include one or more of the following:
 - a. Plant or tree substitutions (e.g. shrub for shrub, tree for tree),
 - b. Ground cover substitutions,
 - c. Trading plant locations if planting beds remain the same, or
 - d. Change in the location of planting beds (site plan) up to a maximum of 10% of the landscaping area. (Amended Ord. No. 9, Series 2009)
 12. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage and does not require more than five additional parking spaces.
 13. Modification to an approved Design Review of a conforming use or structure up to and including 1,500 square feet or up to and including 25% of the building square footage, whichever is less.
 14. Within the Limited Industrial District and Pacific View Business Park District: A change in setbacks or lot coverage by less than 10 percent provided the resulting setback or lot coverage does not exceed that allowed by the land use district.
 15. A change in the type and/or location of access-ways, drives or parking areas not affecting off-site traffic.
 16. Changes to or the addition of on-site stormwater facilities not reviewed as part of another process.
 17. Cluster Housing in the High Density Residential District.
 18. Other proposals that do not require the exercise of discretion.
- B. Zoning Checklist: The City Planning Official reviews proposals requiring a staff review using a Zoning Checklist. The Zoning Checklist is a preliminary review that is intended to ensure a project proposal meets the basic requirements of Title 10 (Zoning) before more detailed plans are prepared and before the City authorizes the Building Official to issue a building permit.
- C. Application Requirements: Approvals requiring Type I review, including Zoning Checklists, shall be made on forms provided by the City.
- D. Requirements: The City shall not act upon an application for land use approval and a building permit shall not be issued until the City Planning Official has approved a Zoning Checklist for the proposed project.
- E. Criteria and Decision: The City Planning Official's review of a Zoning Checklist is intended to determine whether minimum code requirements are met and whether any other land use permit or approval is required prior to issuance of a building permit.
- F. Effective Date. A Zoning Checklist decision is final on the date it is signed by the City Planning Director. It is not a land use decision as defined by ORS 197.015, and therefore is not subject to appeal to the State Land Use Board of Appeals. A Type I decision is the final decision of the City. It cannot be appealed to City officials through a Type I process.

10-1-1-6-2: TYPE II REVIEWS – ADMINISTRATIVE REVIEWS:

- A. The Planning Director, or designated planning staff may make administrative decisions (limited land use). The Type II procedure is used when there are clear and objective approval criteria and applying City standards requires limited use of discretion.
- B. Type II (Administrative) Decisions are based upon clear compliance with specific standards. Such decisions include, but are not limited to the following:
 - 1. Vegetation clearing permits.
 - 2. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage and does not require more than five additional parking spaces.
 - 3. Modification of a non-conforming use or structure up to and including 1,500 square feet or up to and including 25% of the building square footage, whichever is less.
 - 4. An increase in residential density by less than 10 percent, provided the resulting density does not exceed that allowed by the land use district.
 - 5. A change in setbacks or lot coverage by less than 10 percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district.
 - 6. Type II review is required for modifications to an approved landscaping plan except those changes permitted under the ministerial process, provided the proposed landscaping plan is consistent with the intent and character of the original approval.
 - 7. Special Use Permit
 - 8. Type II Review is required for all new construction, expansions, change of use and remodels within the Limited Industrial District and Pacific View Business Park District, except certain changes may be approved as indicated under the ministerial process.
 - 9. Adjustments as permitted in Title 10 Chapter 5.
 - 10. Design Review for the following residential development types:
 - a. Single-family attached dwellings in Medium Density Residential and Manufactured Home Park Districts.
 - b. Multi-family residential development in the High Density Residential District.
 - c. Second-floor residential development in the Old Town, Mainstreet, Commercial and North Commercial Districts.
 - 11. Partitions, tentative plans, not utilizing Title 11 Chapter 7.
 - 12. Subdivisions, tentative plans, not utilizing Title 11 Chapter 7.
 - 13. Replats of recorded partition or subdivision plats, not utilizing Title 11 Chapter 7.
- C. The Director may refer a request for administrative review to the Planning Commission/for decision. If such a referral is made, the request shall be scheduled on the next available Planning Commission agenda, providing that time allows and subject to proper notice requirements.

D. Notice - Information:

1. Type II Decisions: The City will post a notice on the subject property and provide Notice of Application to owners of property within 100 feet of the entire contiguous site for which the application is made. The list of property owners will be compiled from the most recent property tax assessment roll.
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the application shall be sent to the Oregon Department of Transportation.
2. Property Owner Notice shall:
 - a. Provide a 14 day period of submission of written comments prior to the decision;
 - b. List applicable criteria for the decision;
 - c. Set forth the street address or other easily understood geographical reference to the subject property;
 - d. State the place, date and time that comments are due, and the person to whom the comments should be addressed;
 - e. State that copies of all evidence relied upon by the applicant are available for review at no cost, and that copies can be obtained at a reasonable cost;
 - f. Include the name and phone number of local government representative to contact and the telephone number where additional information may be obtained.

E. Request for referral by the Planning Commission Chair: The Chair of the Planning Commission may, within the 14 days notice period, request that staff refer any application to the Planning Commission for review and decision.

F. Type II decision requirements: The Director's decision shall address all of the relevant approval criteria. Based on the criteria and the facts contained within the record, the Director shall approve with or without conditions or deny the request, permit or action.

G. Notice of Decision: A notice of the action or decision and right of appeal shall be given in writing to the applicant. Any party who submitted written testimony must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.

H. Appeal process: As set forth in 10-1-1-7 or appealed by the Planning Commission.

I. Fee: A fee shall be established to cover at least direct costs of the application. (Ord. No. 15, 2002)

10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS:

A. Hearings are required for Type III (quasi-judicial) land use matters requiring Planning Commission review. Type III applications include, but are not limited to:

1. Limited land use decisions for non-residential uses made by staff, for which a request for referral to Planning Commission by the Planning Commission Chairperson or Planning Director has been made.

2. Change of use from a less intensive use to a greater intensive use, which does not increase the building's square footage, but requires more than five additional parking spaces.
3. Modification of greater than 1,500 square feet or greater than 25% of the building square footage, whichever is less.
4. An increase in residential density by more than 10 percent, or where the resulting density exceeds that allowed by the land use district.
5. New construction requiring Design Review by the Planning Commission.
6. Planned Unit Developments, preliminary and final plans.
7. Conditional Use Permits.
8. Variances.
9. Quasi-Judicial Zone Changes.
10. Other applications similar to those above which require notice to surrounding property owners and a public hearing.

B. Notification of Hearing:

1. At least twenty (20) days prior to a Type III (quasi-judicial) hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.
 - b. For a zone change application with two or more evidentiary hearings, notice of hearing shall be mailed no less than ten (10) days prior to the date of the Planning Commission hearing and no less than ten (10) days prior to the date of the City Council hearing.
 - c. For an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and ORS 227.175(8).
 - d. Notice shall be mailed to any person who submits a written request to receive notice.
 - e. For appeals, the appellant and all persons who provided testimony in the original decision.
2. Prior to a Type III (quasi-judicial) hearing, notice shall be published one (1) time in a newspaper of general circulation. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.

C. Notice Mailed to Surrounding Property Owners - Information provided:

1. The notice shall:

- a. Explain the nature of the application and the proposed use or uses which could be authorized;
- b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;
- c. Set forth the street address or other easily understood geographical reference to the subject property;
- d. State the date, time and location of the hearing;
- e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;
- f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
- g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;
- h. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- i. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.

D. Hearing Procedure: All Type III hearings shall conform to the procedures of Florence City Code Title 2, Chapters 3 and 10.

E. Action by the Planning Commission:

1. At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.
2. Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.
3. In the case of a rezoning request, it shall additionally be shown that a public need exists; and that the need will be best served by changing the zoning of the parcel of land in question.
4. There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.

F. Notice of Decision by the Planning Commission: A notice of the action or decision of the Planning Commission, and right of appeal shall be given in writing to the applicant. Any party who testified either in writing or verbally at the hearing must provide a mailing address in order to be noticed. The notice may be served personally, or sent by mail. The notice shall be deemed served at the time it is deposited in the United States mail.

- G. Limitations on Refiling of Applications: Where an application has been denied, no new application for the same purpose shall be filed within six (6) months of the date the previous denial became final unless the Planning Commission can show good cause for granting permission to do so.
- H. Consolidated Procedures: Whenever possible an application for development such as a Conditional Use, Variance, or other action requiring Planning Commission approvals be consolidated to provide faster service to the applicant. (ORS 227.175(2)), (Amd. by Ord. No. 4, Series 2011)

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)

- A. A legislative change in zoning district boundaries, in the text of this Title, (Title 10), Title 11, or in the Comprehensive Plan may be initiated by resolution of the Planning Commission or by a request of the Council to the Planning Commission that proposes changes be considered by the Commission and its recommendation returned to the Council, or by an application for an amendment by a citizen.
- B. Pre-Application Conference: A pre-application conference is required for all Type IV applications initiated by a party other than the City of Florence.
- C. Timing of Requests: The City Council may establish a calendar for the purpose of accepting Type IV requests only at designated times. The City Council may initiate its own legislative proposals at any time.
- D. Notice of Hearing:
 - 1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).
 - 2. Notification requirements. Notice of public hearings for the request shall be given by the Planning Department in the following manner:
 - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and mailed to:
 - 1. Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment.
 - 2. Any affected government agency.
 - 3. Any person who requests notice in writing.
 - 4. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.
 - 5. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.
 - b. At least 10 days before the scheduled Planning Commission hearing date, and 14 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City.

- c. The City Planning Official or designee shall:
 - 1. For each mailing of notice, file an affidavit of mailing in the record as provided by subsection.
 - 2. For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection b.
 - d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and zoning code amendments at least 35 days before the first evidentiary hearing.
3. Content of notices. The mailed and published notices shall include the following information:
- a. The number and title of the file containing the application, and the address and telephone number of the City Planning Official or designee's office where additional information about the application can be obtained.
 - b. The proposed site location, if any.
 - c. A description of the proposed site and the proposal and the place where all relevant materials and information may be obtained or reviewed.
 - d. The time(s), place(s), and date(s) of the public hearing(s).
 - e. A statement that public oral or written testimony is invited.
 - f. Each mailed notice required by this section shall contain the following statement: "Notice to mortgagee, lien holder, vendor, or seller: The City of Florence Zoning Code requires that if you receive this notice that it shall be promptly forwarded to the purchaser.
4. Failure to receive notice. The failure of any person to receive notice shall not invalidate the action, providing:
- a. Personal notice is deemed given where the notice is deposited with the United States Postal Service.
 - b. Published notice is deemed given on the date it is published.
5. Notice of Decision. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development. The City shall also provide notice to all persons as required by other applicable laws. Failure of any person to receive mailed notice shall not invalidate the decision, provided that a good faith attempt was made to mail the notice.
- E. Final Decision and Effective Date. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

10-1-1-7: APPEALS: Under this Title, any limited land use or quasi-judicial decision may be appealed in accordance with the procedure listed below. Administrative decisions may be appealed to the Planning Commission. Planning Commission decisions may be appealed to the City Council.

- A. A notice of intent to appeal must be filed by an affected party, which includes persons testifying orally or in written form at the hearing held on the matter.

- B. Such appeal shall be initiated within twelve (12) calendar days of the date of the mailing of the decision by filing written notice of appeal with the City of Florence Community Development Department. The person filing the notice of intent to appeal shall also certify the date that a copy of the notice was delivered or mailed by first class mail postage prepaid to all other affected parties. If an appeal is not received by the city no later than 4:00 pm of the 12th day after the notice of decision is mailed, the decision shall be final.
- C. If the applicant has signed an "Agreement of Acceptance" and there is no other party who could appeal the decision, the appeal period is waived.
- D. The written petition on appeal shall include:
1. A statement of the interest of the petitioner to determine standing as an affected party.
 2. The date of the decision of the initial action.
 3. The specific errors, if any, made in the decision of the initial action and the grounds therefore.
 4. The action requested of the Planning Commission or Council and the grounds therefore.
 5. A certification of the date that a copy of the written petition on appeal was delivered or mailed by first class mail postage prepaid to all affected parties.
- E. The review of the initial action shall be confined to the issues raised upon appeal and be based on the record of the proceeding below, which shall include:
1. All materials, pleadings, memoranda, stipulations and motions submitted by any party to the proceeding and received or considered as evidence.
 2. All materials submitted by the City staff with respect to the application.
 3. The minutes of the hearing (if applicable).
 4. The Findings on which the decision is based.
 5. The notice of intent to appeal or the requests for review and the written petitions on appeal.
 6. Argument by the parties or their legal representatives.
- F. The Body hearing the appeal may affirm, reverse or amend the decision and may reasonably grant approval subject to conditions necessary to carry out the Comprehensive Plan and ordinances. The Council may also refer the matter back to the Planning Commission for additional information. When rendering its decision, the Body hearing the appeal shall make findings based on the record before it and any testimony or other evidence received by it.
- G. Whenever two members of the City Council submit to the Community Development Department a written request for review within twelve (12) days of the date of the mailing of the Planning Commission decision, the Council shall review the decision of the Planning Commission. Each request for review shall identify the issues that the affected parties are to address. The Community Development Department shall deliver or mail by first class mail a copy of the requests for review to all affected parties and to the other members of the Council. Such requests for review shall be considered an appeal, with all affected parties allowed an opportunity to submit written petitions on appeal within the time specified in paragraph A of this subsection. Each person filing a written petition on appeal shall be heard by the Council. The Council shall review the record to determine whether there is sufficient evidence to support the findings, whether the finds are sufficient to support the Planning Commission decision, and where appropriate, whether the decision of the Commission is a proper interpretation of the applicable ordinances.

- H. Any action or decision by the City Council arising from an appeal, except a referral back to the Planning Commission, shall be final and conclusive.
- I. The Council, by resolution shall establish a schedule of filing fees for all appeals from final decisions of the Planning Commission. Council shall use the following criteria in establishing such a fee schedule; that the fee charged bear some relation to the City's cost in processing the appeal; and that the fee or fees charged be consistent in amount with fees charged by similar municipalities or agencies. (Amd. by Ord. No. 30, Series 1990).

10-1-1-8: ENFORCEMENT:

- A. Enforcement Responsibility: It shall be the duty of the City Manager and/or Building Official to see that this Title is enforced through the proper legal channels. There shall be no permit issued for the construction or alteration of any building, or part thereof, unless the plans, specifications and intended use of such building conforms in all respects to the provisions of this Title.
- B. Abatement: Any use which is established, operated, erected, moved, altered, enlarged or maintained contrary to the zoning regulations shall be, and is hereby declared to be unlawful and a public nuisance and may be abated as such. (Ord. 625, 6-30-80).
- C. Final Action on Permits: Final action on permit applications and zone changes shall take place within 120 days of filing a complete application, except where the applicant requests a longer time, in compliance with ORS 227.178. (Amd. by Ord. No. 30, Series 1990).

10-1-2: USE DISTRICTS AND BOUNDARIES:

10-1-2-1: DISTRICTS ESTABLISHED: For the purpose of this Title, the City is hereby divided into the zoning districts, as established within this Title 10.

10-1-2-2: CHANGE OF BOUNDARIES ON ZONING MAP: The basic purpose of this Title is to indicate the zoning districts into which the City is divided and to set forth the uses permitted in each zone. The zoning districts are shown on the Zoning Map which is an integral part of this Title. The map shall be prepared from base maps which clearly indicate property lines as well as lot, block and street lines. Once adopted, one copy of the Zoning Map shall be filed with the City Recorder and never destroyed or altered in any way. Amendments to the map (zone boundary changes) shall be indicated on subsequent maps, dated and filed with the map originally adopted. Each map shall bear the signature of the Planning Commission chairman who shall testify to their authenticity. (Amd. by Ord. 30, 1990).

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990).

10-1-3: AMENDMENTS AND CHANGES:

- A. Purpose: As the Comprehensive Plan for the City is periodically reviewed and revised, there will be a need for changes of the zoning district boundaries and the various regulations of this Title. Such changes or amendments shall be made in accordance with the procedures in this Section.
- B. Type III (Quasi-Judicial) Changes:
 - 1. Initiation: A quasi-judicial zoning change and related Comprehensive Plan changes may be initiated by application of a property owner within the affected area, by a person having substantial ownership interest in the property, by resolution of the Planning Commission or motion of the City Council, and also by individual citizens or citizen groups during Plan update as provided in The Comprehensive Plan.

2. Application Fees: When proceedings are initiated by a property owner, filing fees shall be collected. The schedule of application fees shall be established by the City Council by resolution. The fee charged shall be no more than the average cost of providing service.
3. Notice and Public Hearing: Notice and public hearing for quasi-judicial changes to this Code and the Comprehensive Plan shall be in accordance with Code Section 10-1-1-6.
4. Planning Commission Review: The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

C. Type IV (Legislative) Changes:

1. Initiation: A legislative change in zoning district boundaries, in the text of this Title, (Title 10), Title 11, or in the Comprehensive Plan may be initiated by resolution of the Planning Commission or by a request of the Council to the Planning Commission that proposes changes be considered by the Commission and its recommendation returned to the Council, or by an application for an amendment by a citizen.
2. Notice and Public Hearing: Such notice and hearing as prescribed by state law and the Comprehensive Plan then in effect. (Amd. by Ord. 30, Series 1990).

Amended by Ord. No. 15, Series 1988
 Amended by Ord. No. 18, Series 1990
 Amended by Ord. No. 30, Series 1990
 Amended by Ord. No. 7, Series 1994
 Amended by Ord. No. 13, Series 2002
 Amended by Ord. No. 15, Series 2002
 Amended by Ord. No. 26, Series 2008 – See Exhibit B
 Amended by Ord. No. 10, Series 2009 – See Exhibit C
 Amended by Ord. No. 9, Series 2009 – See Exhibit G
 Amended by Ord. No. 4, Series 2010 – See Exhibit C (effective 4-5-10)
 Amended by Ord. No. 2, Series 2011 (effective 3-11-11)
 Sections 10-1-1-4, 10-1-1-5, and 10-1-4 Amended by Ord. No. 4, Series 2011 – See Exhibit 4E (effective 4-22-11)
 Section 10-1-4 “Dwelling” & “Recreational Vehicle” Amended by Ord. No. 21, Series 2011 – See Exhibit C (effective 1-5-12)
 Section 10-1-1-4-D, 10-1-1-5-B-1-a and 10-1-1-6-D-1-a Amended by Ord. No. 5, Series 2012 – See Exhibit C (effective 1-16-13)
 Section 10-1-1-6, 10-1-1-7, and 10-1-5 Amended by Ord. No. 3, Series 2013 – See Exhibit B (effective 7-31-13)
 Section 10-1-4 “Lighting” added by Ord. No. 12, Series 2014
 Section 10-1-4 amended by Ord. No. 1, Series 2015 (effective 3-17-15)
 Sections 10-1-1-3, -1-1-4, -1-1-5, -1-1-6, and 10-1-3 amended, and Sections 10-1-4 and 10-1-5 deleted by Ord. 11, Series 2016 (effective 11-16-16)
 Section 10-1-1-5 amended by Ord. No. 4, Series 2018 (effective 6-21-18)
 Table 10-1-1 and Sections 10-1-1-6-1, 10-1-1-6-2-B, 10-1-1-6-3-A and 10-1-1-4-B amended by Ord. No. 7, series 2019 (effective 12-18-19)

Annexation

frequently

asked questions

January 2021

Annexation processes in Oregon vary from city to city in accordance with State Law. This FAQ serves to provide general information on annexation in the City of Florence. The City's current policy, adopted by the City Council in 2010, is to not send individual annexation requests to a City-wide vote. A process for reviewing annexation petitions includes public hearings before both the Planning Commission and the City Council.

What is annexation?

Annexation is the legal process by which properties become part of a city. After annexation, a property will be inside the city limits and thereafter subject to City jurisdiction. Annexation to the City is required before land can be developed at urban density with Florence zoning, receive City police services, hook up to Florence utilities, and receive other services provided by the City. If a property is eligible for annexation, the City is legally obligated to consider the request and make a decision based on specific legal criteria within 120 days.

Who is eligible to annex?

Land proposed to be annexed must be within the City's Urban Growth Boundary (UGB) and contiguous to the city limits or separated from the city only by public right of way or a stream, bay, lake, or other body of water.

Within the Urban Growth Boundary?

Areas eligible for annexation are those properties within the Urban Growth Boundary (UGB). The UGB is the area that the City, through its Comprehensive Plan and approval by the State of Oregon, has determined is subject to urban uses and eventual inclusion within the City.

Annexed Area Contiguous to Current City Boundary?

In addition to being located within the Florence UGB, properties must be contiguous to the City's boundary in order to be eligible to annex. In some cases, the connection to the City boundary can be made by annexing a right of way, such as a street.

Can the City Provide Services?

In order to take a property into its jurisdiction, the City must be able to provide services such as wastewater treatment and police service. The City also coordinates with other agencies to ensure non-City provided services would be available, including water supply, fire protection, electricity, and more. The adequacy of these services for a particular kind of development isn't a major factor until development is actually proposed in a later application. For the purposes of an annexation request, it only matters that services can be provided at a basic level.

Annexation Authority & Regulations

Chapter II Section 4h of the Florence City Charter outlines the powers conferred upon the City by the Charter. One of those powers is annexation. The City has the authority to annex areas to the City in accordance with State law.

Annexation requests are regulated by Oregon Revised Statute 222 and Florence City Code 10-1-3.

Could my property be annexed if I do not want it to be?

The City's current policy is not to force annexation, meaning a property owner has to request annexation for their property and go through the process.

If a property or right of way is annexed next to me, but I remain in the County, would I be required to pay City taxes, too?

No. The City only taxes and provides City services to property within City limits, even if you are along a street that has been annexed.

...

Contact the Community Development Department:

planningdepartment@ci.florence.or.us

541-997-8237

...

For more information on the City of Florence services and operations, visit

www.ci.florence.or.us.



City of Florence
A City in Motion

annexation process

Who approves annexations?

The Florence City Council must approve all annexations in Florence. Applications for annexation are submitted by property owners to the City of Florence's Community Development Department. Staff review applications per the Florence City Code and present the applications to the Florence Planning Commission. After a public hearing, the Planning Commission deliberates and makes their recommendation to the Florence City Council based on the findings of facts. The City Council then makes a final decision after another public hearing.

What does annexation mean for development of a property?

Properties in the City's jurisdiction are eligible to propose development under the City's codes. A property owner can only propose development to the City after the land has been brought into the City's jurisdiction. Determining whether a proposed development complies with City regulations is done through a different process from annexation, however, and annexation does not represent approval for development. Just like properties that are already in the City, a property proposed for annexation will have to file new applications and go through development review before anything can be built. Proposals such as subdivisions or non-residential development can expect new public hearings, design review, and other consideration.

Annexation is ultimately a legal change involving redrawing maps and handing off responsibility for services and regulation between public agencies. On its own, annexation does not represent an approval for development. When a property owner proposes development that could impact the transportation system, the City's transportation codes will be applied; when a proposal could impact stormwater runoff, the City's stormwater codes will be applied, etc.

connecting to city services

Do I have to connect to City sewer if I am annexed?

No. The City does not require connection to sanitary sewer upon annexation. Reasons for this include the lack of gravity sewers in the area; direct connection to a pressure sewer main which requires the home service line to be pressurized, and individual sewer connections are not practical because of the need for a sewer pump within the home. If a request to annex into the City is approved by the City Council and the desire is to connect to City sewer, coordination with the City's Public Works Department will occur to develop a plan to for connection.

Do I have to connect to City water if I am annexed?

No. The City does not require connection to water service upon annexation. Properties that are currently served by Heceta Water People's Utility District (PUD) will continue that service after annexation. The City and Heceta Water PUD work together to ensure that properties are provided with appropriate domestic water and fire service within our two service area boundaries.

Properties that are annexed and are within the Heceta Water PUD service area, but do not currently have service or service infrastructure to the property, will remain within the Heceta Water PUD service area. Those property owners will need to work with Heceta Water PUD to determine service to their property. Properties owners that annex into the City of Florence that are currently outside both the City's and Heceta Water PUD's service districts will need to work with the City of Florence Public Works Department to determine how and when water service can be provided to those properties.

What is an Urban Growth Boundary?

Each Oregon city is surrounded by an urban growth boundary (UGB); a line drawn on planning maps to designate where a city expects to grow over a 20-year period. This growth can occur with new houses, industrial facilities, businesses, or public facilities such as parks and utilities. Restrictions in areas outside of a UGB protect farm and forest resource land and prohibit urban development. Generally speaking, it's where the city ends and the farms and forests begin.

A UGB is expanded through a joint effort involving the city and county, in coordination with special districts that provide important services in the urban area. Once land is included in a UGB, it is eligible for annexation to a city.

The City of Florence last adjusted the Florence UGB in 2002. In 2017 -2018, the City of Florence underwent a Housing Needs and Economic Opportunities Analysis. These analyses contributed towards the update of the Buildable Lands Inventory which looks at the land availability to accommodate projected demand for housing and economic needs for the next 20 years of growth. These studies demonstrated that the current land available within the UGB is adequate to address the projected growth needs for the next 20 years.

I want to annex. Now what?

You will want to contact the City's Community Development Department. City staff will check to ensure you are eligible to annex and can help you navigate the processes needed for annexation. The City works as a team to provide you with the best information possible as you move towards development.

city taxes and next steps

If annexation of my property is approved, will my taxes increase after annexation?

Yes. City taxes are higher than the taxes in unincorporated areas, but the level of services is higher, too. The City's permanent tax rate is \$2.8610 per \$1,000 of the property's assessed value. The City also currently levies \$0.1496 per \$1,000 for a general obligation bond (Fiscal Year 2021). This bond will expire June 30, 2022.

Based on the current combined tax rate of \$3.0106 per \$1,000 of assessed value, as an example, if a property with an assessed value of \$200,000 is annexed into the city, the property owner's property taxes would increase by \$602.12 for the current tax year. That includes \$572.20 to the City and \$29.92 for the bond.

City tax revenue is used to pay for police protection, parks, planning/building, code enforcement, and city administration.

Please note, assessed value and real market value are different. Taxes are based on the assessed value of a property. To find out more information and how your particular taxes may change, you should contact the Lane County Office of Assessment and Taxation by phone at 541-682-4321 or visit https://lanecounty.org/government/county_departments/assessment_taxation.

What happens after annexation?

- ◆ Your address will not change.
The United States Postal Service does not change your zip (or the city or county name associated with your zip code) as a result of annexation.
- ◆ Your property will be incorporated into the City and assigned a City zoning designation.
- ◆ Some of the tax rates on your annual property tax statement will change.
- ◆ Some services, such as police and code enforcement, will be provided by the City. Other services will continue to be provided by the same service districts (e.g. Library, Fire, & Ambulance.) and private and customer owned companies (e.g. Charter, Century Link, Central Lincoln PUD, Heceta Water PUD, etc.) that are currently serving your property.
- ◆ The City will notify all existing service providers of your property's annexation into the City.
- ◆ Some of the uses or structures on the property may not conform to the City's code. This is okay and not unusual. Having a nonconforming use or structure will not prevent you from annexing or continuing to use your property.
For example, structures on your property may be larger or closer to your property line than what the City's code allows. Uses and structures that were legal when established, but that do not conform to the City's current zoning code are considered nonconforming. Nonconforming uses are allowed to continue and nonconforming structures are allowed to be maintained in reasonable repair. However, neither is allowed to expand or be significantly altered without City review and approval.
- ◆ Future development on a property, such as a home remodel or new driveway, will be subject to the City's permitting requirements and zoning code.
For example, a home remodel or new deck may require a building permit and new driveway may require an erosion control and/or right-of-way permit. Please check with the City before making these kinds of changes on your property.

How are property taxes calculated in Oregon?

In Oregon, property is taxed on its assessed value. A property's assessed value is the lower of its real market value or its maximum assessed value. Each year, the county assessor determines the property's real market value and calculates its maximum assessed value. You are taxed on the lesser of the two, which is called the assessed value. Real market value and maximum assessed value are defined below.

Real Market Value (RMV)

Oregon law says the assessor must value all property at 100 percent of its real market value. Real market value (RMV) is typically the price your property would sell for in a transaction between a willing buyer and a willing seller on January 1, the assessment date for the tax year.

Maximum Assessed Value (MAV)

A property's maximum assessed value (MAV) is the taxable value limit established for each property. The first MAV for each property was set in the 1997-98 tax year. For that year, the MAV was the property's 1995-96 RMV minus 10 percent. MAV can increase for only two reasons: a 3 percent annual increase or specific property events.

Full details on real property assessment can be found at the links below:

Lane County

https://lanecounty.org/government/county_departments/assessment_taxation

State of Oregon

<https://www.oregon.gov/dor/programs/property>

Chapter 15.250 ANNEXATIONS

Sections:

- 15.250.010 Statement of purpose.**
- 15.250.020 Conditions for annexation.**
- 15.250.030 Quasi-judicial annexation criteria.**
- 15.250.040 Quasi-judicial annexation procedures.**
- 15.250.050 Application requirements for quasi-judicial annexations.**
- 15.250.055 Legislative annexations.**
- 15.250.060 Health hazard annexation.**
- 15.250.070 Island annexation.**
- 15.250.075 Batch annexation of small properties by consent.**
- 15.250.080 Comprehensive plan and zoning designations.**
- 15.250.090 Coordination.**
- 15.250.100 Annexation of nonconforming uses.**

15.250.010 Statement of purpose.

The [city](#) finds that annexation is the first step to converting future urbanizable lands to urbanizable land within the Newberg urban growth boundary, and that as such it is an important part of the process of providing timely and orderly urban development. The [city](#) also recognizes that the development of lands at an urban density must include the provision of an adequate level of required urban services such as wastewater, water, and roads. Policies and procedures adopted in this [code](#) are intended to carry out the directives of the citizens of Newberg and the Newberg [comprehensive plan](#), and to ensure that annexation of lands to the [city](#) is incorporated into the process of providing a timely and orderly conversion of lands to urban [uses](#). The [city](#) Charter requires that, unless otherwise mandated by state law, annexation may only be approved by a majority of those voting. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.260.]

Cross-reference: See ORS [222.855](#) for annexation to abate a public danger. Also, see ORS [222.111](#) for annexation eligibility and ORS [222.010](#) – [222.750](#) for annexation procedures.

15.250.020 Conditions for annexation.

The following conditions must be met prior to or concurrent with [city](#) processing of any annexation request:

- A. The subject site must be located within the Newberg urban growth boundary or Newberg urban reserve areas.
- B. The subject site must be contiguous to the existing [city](#) limits. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.261.]

15.250.030 Quasi-judicial annexation criteria.

Quasi-judicial annexation applications are those filed pursuant to the application of property [owners](#) and exclude legislative annexations. The following criteria shall apply to all quasi-judicial annexation requests:

A. The proposed [use](#) for the site complies with the Newberg [comprehensive plan](#) and with the designation on the Newberg [comprehensive plan](#) map. If a redesignation of the plan map is requested concurrent with annexation, the [uses](#) allowed under the proposed designation must comply with the Newberg [comprehensive plan](#).

1. Where large LDR or MDR designated [parcels](#) or groups of [parcels](#) are to be annexed, the applicant(s) shall concurrently apply for a [comprehensive plan](#) map [amendment](#) to include some HDR-designated/R-3 zoned lands, consistent with the policy of distributing R-3 multifamily housing throughout the community. Such zoning shall be applied to portions of the property that are most suitable for high density development.

For the purposes of this policy, “large” is defined as an area greater than 15 net acres, after subtracting for land in [stream corridor](#) overlays. “Some” is defined as 10 percent of the net size of the application.

B. An adequate level of urban services must be available, or made available, within three years’ time of annexation, except as noted in subsection (E) of this section. An “adequate level of urban services” shall be defined as:

1. Municipal wastewater and water service meeting the requirements enumerated in the Newberg [comprehensive plan](#) for provision of these services.

2. Roads with an adequate design capacity for the proposed [use](#) and projected future [uses](#). Where construction of the road is not deemed necessary within the three-year time period, the [city](#) shall note requirements such as dedication of [right-of-way](#), waiver of remonstrance against assessment for road improvement costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The [city](#) shall also consider public costs for improvement and the ability of the [city](#) to provide for those costs.

C. Findings documenting the availability of police, fire, [parks](#), and school facilities and services shall be made to allow for conclusionary findings either for or against the proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.

D. The burden for providing the findings for subsections (A), (B) and (C) of this section is placed upon the [applicant](#).

E. The [city council](#) may annex properties where urban services are not and cannot practically be made available within the three-year time frame noted in subsection (B) of this section, but where annexation is needed to address a health hazard, to annex an island, to address wastewater or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the [city council](#) shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available. [Ord. [2826](#) § 1 (Exh. A), 5-7-18; Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2640](#), 2-21-06; Ord. [2451](#), 12-2-96. Code 2001 § 151.262.]

15.250.040 Quasi-judicial annexation procedures.

All quasi-judicial annexation requests approved by the [city council](#) shall be referred to the voters in accordance with the requirements of this [code](#) and ORS Chapter [222](#).

A. Annexation elections are normally scheduled for the biennial primary or general elections which are held in May and November of even-numbered years. Applications for annexation shall be filed with the planning division before 5:00 p.m. on October 1st for a primary ballot election in May and before 5:00 p.m. on April 1st for a general ballot election in November. An applicant may request that the city council schedule an annexation ballot measure for a special election date. Applications proposed for review at a special election must be filed with the city eight months prior to the proposed special election date. Filing of an annexation application and having the application deemed complete does not obligate the city to place the annexation question before the voters at any particular election. This

subsection does not obligate the city to process an annexation application within any time frame not required by ordinance or state statute.

B. The application shall be processed in accordance with the Type III processing procedures outlined in this [code](#). Once the [director](#) receives a completed application for annexation, the [director](#) shall schedule a recommendation [hearing](#) before the [planning commission](#). The [planning commission](#) shall make a recommendation to the [city council](#) as to whether or not the application meets the criteria contained in NMC [15.250.030](#). This decision shall be a quasi-judicial determination and not a legislative determination. The [planning commission](#) may also recommend denial of an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to recommend denial of an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.

C. Following the [planning commission](#) hearing, the [director](#) shall schedule a [city council](#) hearing to consider the request. The [city council](#) shall conduct a [quasi-judicial hearing](#) and determine whether or not the application meets the criteria contained in NMC [15.250.030](#). The [hearing](#) at the [city council](#) shall be considered a [new hearing](#). If additional testimony is submitted, the [city council](#) may, at its own discretion, return the application to the [planning commission](#) for further review and recommendation. The [city council](#) may also deny an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to deny an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.

D. If the [city council](#) approves the annexation request, the proposal may, at the [city council](#)'s sole discretion, be placed before the voters of the [city](#) as follows:

1. The biennial primary or general elections which are held in May and November of even-numbered years; or
2. An available special election.

E. If the [city](#) schedules the annexation election for an election other than the biennial primary or general election, the agreement of the [applicant](#) or

[owner](#) of the property must be obtained. All costs associated with placing the matter on the ballot shall be paid for by the [applicant](#) or [owner](#) of the property being annexed.

F. The [city](#) shall place a notice of the annexation election in a newspaper of general circulation in the [city](#) not more than 30 days nor less than 20 days prior to the date of the election. Such notice shall take the form of a minimum one-quarter-page layout, which includes a map of the property to be annexed and unbiased information regarding the annexation.

G. The [city](#) shall cause the property under consideration for annexation to be posted with a minimum of one [sign](#) not less than 16 square feet in size. The [sign](#) shall provide notice of the annexation election, a map of the subject property, and unbiased information regarding the annexation. The [sign](#) shall be removed by the [applicant](#) within 10 days following the election day.

H. In addition to the regular annexation fee, the [applicant](#) shall pay for all of the costs associated with the election, the ad in the newspaper, and posting of the notice. The [city](#) shall inform the [applicant](#) of the costs necessary for the newspaper ad and property posting and of the deadline for payment of these costs.

I. Should this annexation request be approved by a majority vote of the electorate of the [city](#) at the election date as identified by resolution of the [city council](#), the property shall be annexed and the following events shall occur:

1. The property shall be ordered and declared annexed and withdrawn from the Newberg rural fire protection district.
2. The territory will be changed from a county zone to a [city](#) zoning designation as indicated in NMC [15.250.080](#). The Newberg, Oregon, zoning map shall be amended to indicate this change.
3. The recorder of the [city](#) is directed to make and submit to the Secretary of State, the Department of Revenue, the Yamhill County elections officer, and the assessor of Yamhill County a certified copy of the following documents:
 - a. A copy of the approved ordinance.
 - b. A map identifying the location of said territory.

J. If the [city council](#) refers an annexation to the voters at a particular election, and the annexation fails to pass at that election, the [applicant](#) may petition the [city council](#) to refer the annexation to the voters at a subsequent election, subject to the following:

1. The petition shall include a fee in an amount determined by resolution of the [city council](#). In addition, should the petition be granted, the [applicant](#) shall be responsible for all election costs,

including the cost of preparing the new annexation measure.

2. The [applicant](#) may only petition the [city council](#) once for resubmittal to place the annexation on the ballot in any 12-month period.

3. The [city council](#) shall hold a [hearing](#) to consider the petition. The [hearing](#) is a [legislative hearing](#). Notice of the [hearing](#) shall be published in accordance with NMC [15.100.270](#).

4. After [hearing](#) the petition, the [city council](#) may decide any of the following:

a. The [city council](#) may approve the petition and schedule the annexation for a subsequent election. The annexation may only be placed before the voters once in any 12-month period. The annexation shall be processed according to the procedures in subsections (D) through (I) of this section.

b. The [city council](#) may deny the petition.

c. If conditions affecting the original criteria for the approval of the annexation by the [city council](#) have changed significantly, the [city council](#) may require the [applicant](#) to resubmit the annexation application for consideration by the [city council](#) and to pay a new annexation application fee. The [city council](#) also may direct that the resubmitted application be referred to the [planning commission](#) for recommendation. If there is a period of more than five years between the [city council](#)'s original quasi-judicial determination that the annexation meets applicable criteria and the annexation election date, then a new application shall be required.

5. The [city council](#) shall have total discretion in determining the timing of placing an annexation measure before the voters, in requiring the submittal of a new or modified annexation application, or in denying a petition for new election.

6. Where an annexation has been initiated by the [city council](#), the [city council](#) may refer the annexation to a subsequent election upon its own motion. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2683](#) § 1, 11-5-2007; Ord. [2501](#), 12-7-98; Ord. [2451](#), 12-2-96. Code 2001 § 151.263.]

15.250.050 Application requirements for quasi-judicial annexations.

Applications for quasi-judicial annexations shall be made on forms provided by the planning division and include the following material:

- A. Written consent to the annexation signed by the requisite number of affected property [owners](#), electors, or both to conduct an election within the area to be annexed, as provided by state law. The consent shall include a waiver stating that the [owner](#) will not file any demand against the [city](#) under Measure 49, approved November 6, 2007, that amended ORS Chapters [195](#) and [197](#).
- B. Legal description of the property to be annexed and a boundary survey certified by a registered engineer or surveyor.
- C. Vicinity map and map of the area to be annexed including adjacent [city](#) territory.
- D. General land [use](#) plan indicating types and intensities of proposed development, transportation corridors (including pedestrian and vehicular corridors), watercourses, significant natural features, [open space](#), significant stands of mature trees, wildlife travel corridors, and adjoining development.
- E. Statement of overall development concept and methods by which physical and related social environment of the site, surrounding area, and community will be enhanced.
- F. Annexation fees, as set by [city council](#) resolution.
- G. Statement outlining method and source of financing to provide additional public facilities.
- H. Comprehensive narrative of potential positive and negative physical, aesthetic, and related social effects of the proposed development on the community as a whole and on the smaller subcommunity or neighborhood of which it will become a part and proposed actions to mitigate such effects.
- I. Concurrent with application for annexation, the property may be assigned one of the following methods for [development plan](#) review:
1. A planned unit development approved through a Type III procedure.
 2. A development agreement approved by the [city council](#).
 3. A contract annexation as provided for in the state statutes. [Development plans](#) must be approved and an annexation contract must be signed by the [city council](#) in order to [use](#) the contract annexation process. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2693](#) § 1 (Exh. A(4)), 3-3-08; Ord. [2612](#), 12-6-04; Ord. [2451](#), 12-2-96. Code 2001 § 151.264.]

Cross-reference: See ORS [222.111](#) for annexation eligibility and ORS [222.010](#) – [222.750](#), pertaining to annexation procedures.

15.250.055 Legislative annexations.

A. Purpose. Legislative annexations are those annexations that are initiated by the [City](#) of Newberg. Legislative annexations include health hazard annexations, island annexations, batch annexations, and other annexations initiated by the [city council](#).

B. Process. Legislative annexations shall be processed as a Type IV legislative action, except as noted. The annexation request shall be reviewed directly by the [city council](#). A [planning commission](#) hearing shall be required only if a [comprehensive plan](#) amendment is involved or [city council](#) refers the matter to the [planning commission](#) for a recommendation.

C. Notice. The [director](#) shall provide notice of hearings:

1. To the [owner](#) of the site proposed for annexation.
2. To [owners](#) of property within 500 feet of the entire site for which the application is made. The list shall be compiled from the most recent property tax assessment roll.
3. To the Department of Land Conservation and Development per NMC [15.100.250](#).
4. Within a newspaper of general circulation within the [city](#) at least 10 days prior to the first public [hearing](#) on the action per NMC [15.100.270](#).

D. Approval. In approving any legislative annexation, the [city council](#) shall follow the applicable procedures of state law and the Newberg Charter. If the [city council](#) approves the annexation, where required by state law or [city](#) Charter the annexation shall be referred to an election at a date determined by the [city council](#). If the annexation election is not approved, the [city council](#), at its discretion, may refer the proposal to a future election with any modifications it determines are appropriate. If an election is not required by state law or [city](#) Charter, the [city council](#) shall by ordinance declare that the territory is annexed to the [city](#). [Ord. [2745](#) § 1 (Exh. A), 7-18-11.]

15.250.060 Health hazard annexation.

The [city](#) shall annex those areas constituting a health hazard in accordance with the Oregon Revised Statutes, taking into consideration the ability of the [city](#) to provide necessary services. Annexation of areas constituting a health hazard is not subject to voter approval. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.265.]

15.250.070 Island annexation.

The following policies are adopted for island annexations:

A. The [city](#) shall attempt to not create islands of unincorporated territory within the corporate limits of the [city](#). If such an island is created, the [city council](#) may set a time for a public [hearing](#) for the purpose of determining if the annexation should be submitted to the voters. The [hearing](#) shall be conducted in accordance with the policies and procedures contained in this [code](#).

B. Written notice to property [owners](#) will be made prior to annexation to allow for property [owner](#) responses. Failure to receive notice shall not in any way invalidate the annexation procedure that may be subsequently undertaken by the [city](#).

C. The island annexation shall follow the procedures required under ORS [222.750](#).

D. Annexation of an island shall be by ordinance, subject to approval by the voting majority. The [city](#) shall allow electors, if any, in the territory proposed to be annexed to vote in the election on the question of annexation. If the [city council](#) finds that a majority of the votes cast in the [city](#) and the territory combined favor annexation, the [city council](#), by ordinance, shall proclaim the annexation approved. The proclamation shall contain a legal description of each territory annexed.

E. For property that is zoned for, and in, residential [use](#) when annexation is initiated by the [city](#) under this section, the [city](#) shall specify an effective date for the annexation that is at least three years and not more than 10 years after the date the [city](#) proclaims the annexation approved. The [director](#) shall:

1. Cause notice of the delayed annexation to be recorded by the county clerk of the county in which any part of the territory subject to delayed annexation is located within 60 days after the [city](#) proclaims the annexation approved; and

2. Notify the county clerk not sooner than 120 days and not later than 90 days before the annexation takes effect.

3. Notwithstanding subsection (D) of this section, property that is subject to delayed annexation becomes part of the [city](#) immediately upon transfer of ownership. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.266.]

15.250.075 Batch annexation of small properties by consent.

With the consent of the property [owners](#), the [city](#) may process multiple smaller annexations together as a legislative annexation in order to streamline the annexation process and to share the financial cost of the application.

A. Eligibility. Properties are eligible for batch annexation if:

1. The total area of each contiguous territory to be annexed does not exceed three buildable acres, unless the [city council](#) moves to allow consideration of a larger territory prior to the [hearing](#).
2. Property [owners](#) shall file a consent and request to annex with the [city](#) on forms provided by the [director](#).
3. The zoning map designation complies with the [comprehensive plan](#) map designation. If a [comprehensive plan](#) map change is proposed the request shall follow the process described in NMC [15.250.050](#)(B).
4. The properties have a residential [comprehensive plan](#) map designation and are intended for residential [use](#).

B. Process. Batch annexations shall be processed as follows:

1. The deadline to file a request shall be November 1st prior to a May primary election in even-numbered years.
2. The [director](#) shall collect the requests. If two or more eligible requests are submitted by November 1st, the [director](#) shall initiate the batch annexation and schedule the item for a [city council](#) hearing. If fewer than two requests are submitted, the [director](#) shall extend the deadline to May 1st of the even-numbered year to allow consideration prior to the general election in November. If multiple requests are not submitted by the May 1st deadline, the requests shall be deferred until multiple requests are received by the next deadline.
3. The [city council](#) may initiate a batch annexation at times other than those specified in this section.
4. Property [owners](#) shall submit a consent to annex form provided by the [city](#) and a request to be part of a batch annexation. The request shall include a legal description of the property and a title report or proof of ownership, and a waiver stating that the [owner](#) will not file any demand against the [city](#) under Measure 49, approved November 6, 2007, that amended ORS Chapters [195](#) and [197](#).
5. If the total acreage of the batch annexation exceeds 15 acres, then the annexation shall be referred to the [planning commission](#) for a public [hearing](#).

C. Criteria for a Batch Annexation. For each property, an adequate level of urban services is or can be made available within three years, including:

1. Municipal wastewater and water service meeting the requirements enumerated in the Newberg [comprehensive plan](#) for provision of these services.
2. Roads with an adequate design capacity for the proposed [use](#) and projected future [uses](#).
3. Police, fire, [parks](#), and school facilities and services.

D. Approval. The [city council](#) may approve or deny all or part of the proposed batch annexation. If the [city council](#) approves, it shall refer the annexation to an election following the legislative process under NMC [15.250.050](#). [Ord. [2745](#) § 1 (Exh. A), 7-18-11.]

15.250.080 Comprehensive plan and zoning designations.

A. The [comprehensive plan](#) map designation of the property at the time of annexation shall be used as a criterion to determine whether or not the proposed request complies with the Newberg [comprehensive plan](#). A redesignation of the [comprehensive plan](#) map may be requested concurrent with annexation. The proposed redesignation shall then be used to determine compliance with the Newberg [comprehensive plan](#).

B. Upon annexation, the area annexed shall be automatically zoned to the corresponding land [use](#) zoning classification which implements the Newberg [comprehensive plan](#) map designation. The corresponding designations are shown in the table below. The procedures and criteria of NMC [15.302.030](#) shall not be required.

Comprehensive Plan Classification	Appropriate Zoning Classification
OS	Any zoning classification
LDR	R-1
MDR	R-2, R-4
HDR	R-3, R-4
COM	C-1, C-2, or C-3 as determined by the director
MIX	C-2, M-1, M-2, or M-E as determined by the director

Comprehensive

<u>Plan</u> Classification	Appropriate Zoning Classification
IND	M-1, M-2, M-3, M-4, or AI as determined by the director
PQ	Any zoning classification
P	CF

C. If a zoning classification is requested by the [applicant](#) for other than that described in subsection (B) of this section, the criteria of NMC [15.302.030](#) shall apply. This application shall be submitted concurrently with the annexation application.

D. In the event that the annexation request is denied, the zone change request shall also be denied. [Ord. [2883](#) § 1 (Exh. A § 1), 6-7-21; Ord. [2747](#) § 1 (Exh. A § 6), 9-6-11; Ord. [2720](#) § 1(9), 11-2-09; Ord. [2451](#), 12-2-96. Code 2001 § 151.267.]

15.250.090 Coordination.

Annexation requests shall be coordinated with affected public and private agencies, including, but not limited to, Yamhill County, Chehalem [Park](#) and Recreation District, Newberg School District, Northwest Natural Gas, Portland General Electric, and, where appropriate, various state agencies. Coordination shall be made by referral of annexation request to these bodies sufficiently in advance of final [city](#) action to allow for reviews and recommendations to be incorporated into the

[city](#) records. [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.268.]

15.250.100 Annexation of nonconforming uses.

When a [nonconforming use](#), as described in NMC [15.205.010](#) through [15.205.100](#), is annexed into the [city](#), the [applicant](#) shall provide a schedule for the removal of the [nonconforming use](#) for the [planning commission](#) and [city council](#). Legal nonconforming residential [uses](#) are allowed to remain indefinitely. At time of approval of the annexation, the [city council](#) may add conditions to ensure the removal of the [nonconforming use](#) during a reasonable time period. The time period may vary from one year to 10 years at the discretion of the [city council](#). [Ord. [2745](#) § 1 (Exh. A), 7-18-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.269.]

The Newberg Municipal Code is current through Ordinance 2888, passed September 20, 2021.

Disclaimer: The city recorder's office has the official version of the Newberg Municipal Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

City Website: <https://www.newbergoregon.gov/>

City Telephone: (503) 537-1283

[Code Publishing Company](#)

ORDINANCE NO. 21-1009

AN ORDINANCE OF THE CITY OF OREGON CITY AMENDING OREGON CITY MUNICIPAL CODE (OCMC) TITLE 14, ANNEXATIONS, CHAPTER 14.04 – CITY BOUNDARY CHANGES AND EXTENSION OF SERVICES

WHEREAS, Oregon City Municipal Code (OCMC) Title 14, Annexations, Chapter 14.04 – City Boundary Changes and Extension of Services provides the standards, procedures, and factors by which the City evaluates annexation proposals; and

WHEREAS, the City Commission recognizes that annexations are discretionary decisions of the City Commission pursuant to OCMC 17.50, 14.04, ORS Ch. 222 and Metro Code 3.09; and

WHEREAS, the City Commission desires to provide greater clarity and specificity to the annexation approval process to ensure that annexations are timely, orderly and efficient; and

WHEREAS, the proposed amendments OCMC 14.04 provide such assurance as well as greater clarity to applicants; and

WHEREAS, the City Commission held three work sessions on December 16th, 2020, January 12th, 2021, and March 3, 2021 to review the code amendments; and

WHEREAS, the Planning Commission held a public hearing on May 10, 2021 and recommended approval of the proposed code amendments with modifications; and

WHEREAS, the City Commission held a public hearing on June 2, 2021 and found that the proposed code amendments meet all of the criteria for Legislative approval as discussed in the Staff Report and Recommended Findings for File LEG-21-00001.

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

Section 1. OCMC 14.04 - City Boundary Changes and Extension of Services is hereby amended (Attachment A).

Read for the first time at a regular meeting of the City Commission held on the 2nd Day of June, 2021, and the City Commission finally enacted the foregoing ordinance this 16th day of June, 2021.



RACHEL LYLES SMITH, Mayor

Attested to this 16th day of June 2021:



Kattie Riggs, City Recorder

Approved as to legal sufficiency:



City Attorney



Oregon City Municipal Code

Chapter 14.04 – City Boundary Changes and Extension of Services

14.04.010 - Purpose.

It is the purpose and general intent of the ordinance codified in this chapter to delineate the appropriate procedures to be followed to annex territory to the City and to undertake other major and minor boundary changes. It is recognized that annexations to the corporate limits are major land use actions affecting all aspects of city government, and that other boundary changes and extensions of services shall also be regulated.

- A. With respect to annexations, the procedures and standards established in this chapter are required for review of proposed annexations in order to:
 - 1. Provide adequate public information and sufficient time for public review before an annexation election, where applicable;
 - 2. Maximize citizen involvement in the annexation review process;
 - 3. Establish a system for measuring the physical, environmental, fiscal and related social effects of proposed annexations; and
 - 4. Ensure adequate time for staff review.
- B. With respect to major and minor boundary changes or extensions of services other than annexations, it is the purpose and general intent of this chapter to provide a method by which such changes or extensions may be reviewed in a rational way and in accordance with applicable comprehensive plans.

14.04.020 - State and regional regulations regarding annexations, other boundary changes and extensions of services.

The regulations and requirements of ORS Ch. 222, and Metro Code Section 3.09, are concurrent obligations for annexation and are not affected by the provisions of this chapter.

14.04.030 - Definitions.

Unless the context requires otherwise, the following definitions and their derivations shall be used in this chapter:

"City" means the City of Oregon City, Oregon.

"Commission" or "City Commission" means the City Commission of Oregon City, Oregon.

"District" means an entity described in ORS 198.010, 198.710(1) to (4) or 199.420.

"Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

"Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a district. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district.

"Planning Commission" means the Oregon City Planning Commission.

"Withdrawal" means the detachment, disconnection, or exclusion of territory from the City or service district.

14.04.040 - Procedures for major boundary changes and for minor boundary changes other than annexations.

- A. With respect to major boundary changes and for minor boundary changes other than for annexations, the procedures that shall be followed shall be those provided by the laws of the State of Oregon.
- B. The City Commission may provide for the withdrawal of territory from a district described in ORS 222.111, when land is annexed into the City. Any such withdrawal shall be specifically set forth in the final order of the City Commission approving the annexation.

14.04.050 - Annexation procedures.

- A. Application Filing Deadlines. If applicable, annexation elections shall be scheduled for March, May, September and November of each year. Each application shall first be approved by the City Commission, which shall provide a valid ballot title in sufficient time for the matter to be submitted to the voters as provided by the election laws of the state of Oregon.
- B. Pre-application Review. Prior to submitting an annexation application, the applicant shall confer in the manner provided by OCMC 17.50.050 with City staff.
- C. Neighborhood Contact. Prior to filing an annexation application, the applicant shall meet with the City-recognized neighborhood association or associations within which the property proposed to be annexed is located. Proactive efforts by the applicant to meet with a neighborhood association shall be deemed a positive factor in the evaluation of the annexation application.
- D. Signatures on Consent Form and Application. The applicant shall sign the consent form and the application for annexation. If the applicant is not the owner of the property proposed for annexation, the owner shall sign the consent form and application in writing before the Community Development Director may accept the same for review.
- E. Contents of Application. An applicant seeking to annex land to the City shall file with the City the appropriate application form approved by the Community Development Director. The application shall include the following:
 - 1. Written consent form to the annexation signed by the requisite number of affected property owners, electors or both, provided by ORS 222, if applicable;
 - 2. A legal description of the territory to be annexed, meeting the relevant requirements of the Metro Code and ORS 308. If such a description is not submitted, a boundary survey may be required. A lot and block description may be substituted for the metes and bounds description if the area is platted. If the legal description contains any deed or book and page references, legible copies of these shall be submitted with the legal description;
 - 3. A list of property owners within three hundred feet of the subject property and, if applicable, those property owners that will be "islanded" by the annexation proposal, on mailing labels acceptable to the City Manager;
 - 4. Two full quarter-section county tax assessor's maps, with the subject property(ies) outlined;
 - 5. A site plan, drawn to scale (not greater than one inch = fifty feet), indicating:
 - a. The location of existing structures (if any);
 - b. The location of streets, sewer, water, electric and other utilities, on or adjacent to the property to be annexed;
 - c. The location and direction of all water features on and abutting the subject property. Approximate location of areas subject to inundation, stormwater overflow or standing

- water. Base flood data showing elevations of all property subject to inundation in the event of one hundred year flood shall be shown;
- d. Natural features, such as rock outcroppings, marshes or wetlands (as delineated by the Division of State Lands), wooded areas, identified habitat conservation areas, isolated preservable trees (trees with trunks over six inches in diameter—as measured four feet above ground), and significant areas of vegetation; and
 - e. General land use plan indicating the types and intensities of the proposed, or potential development.
6. If applicable, a double-majority worksheet, certification of ownership and voters. Certification of legal description and map, and boundary change data sheet on forms provided by the City.
 7. Narrative statements explaining the conditions surrounding the proposal and addressing each of the annexation factors contained in section 14.04.060, as relevant.
 - a. Statement of availability, capacity and status of existing water, sewer, drainage, transportation, wireless communications infrastructure, park and school facilities;
 - b. Statement of increased demand for such facilities to be generated by the proposed development, if any, at this time;
 - c. Statement of additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand;
 - d. Statement outlining method and source of financing required to provide additional facilities, if any;
 - e. Statement of overall development concept and methods by which the physical and related social environment of the site, surrounding area and community will be enhanced;
 - f. Statement of potential physical, aesthetic, and related social effects of the proposed, or potential development on the community as a whole and on the small subcommunity or neighborhood of which it will become a part; and proposed actions to mitigate such negative effects, if any; and
 - g. Statement indicating the type and nature of any comprehensive plan text or map amendments, or zoning text or map amendments that may be required to complete the proposed development.
 - h. The narrative statements described above, and the analyses contained therein should be based on the reasonably “worst case development scenario”. This means that the required analysis of impacts on city services and utilities should assume the most reasonably intense development scenario given the anticipated city zoning for the annexation area using commonly accepted measures such as number of residential units, overall residents, commercial floor area, etc.
 8. The application fee for annexations established by resolution of the City Commission and any fees required by Metro. In addition to the application fees, the City Manager shall require a deposit, which is adequate to cover any and all costs related to the election.
 9. Paper and electronic copies of the complete application as required by the community development director.

14.04.060 - Annexation factors.

- A. When reviewing a proposed annexation, the commission shall consider the following factors, as relevant and approve an annexation only when it finds that on balance these factors are satisfied:
 1. Adequacy of access to the site;
 2. Consistency of the proposal with the City's adopted Comprehensive Plan, including but not limited to goals and policies for urbanization, housing, cultural, historic and natural resources, infrastructure, and provision of public infrastructure and community services;

3. Adequacy and availability of the following public facilities and services to serve potential development at time of development;
 - a. Transportation. The urbanization of the site is accounted for in the Transportation System Plan. The application demonstrates that the annexation is consistent with the Transportation Planning Rule (TPR) or explain why a TPR analysis is not required;
 - b. Sewer. The urbanization of the site is accounted for in the Sewer Master Plan;
 - c. Water. The urbanization of the site is accounted for in the Water Master Plan;
 - d. Stormwater. The urbanization of the site is accounted for in the Stormwater Master Plan;
 - e. Police, Fire, and Emergency Services. Police, fire, and emergency services can adequately serve the site;
 - f. Parks. The urbanization of the site is accounted for in the Parks and Recreation Master Plan; and
 - g. Schools. The urbanization of the site is analyzed for school capacity in a Concept Plan or in a school forecast approved by Oregon City School District.
4. Demonstration of how the impacts of future development to City public facilities and services will be mitigated. Mitigation may include on-site or off-site infrastructure or improvements to existing infrastructure to City standards and specifications, payment of system development charges, etc. Funding for the mitigation must be identified. The City Commission reserves the right to enter into a development agreement with the applicant that governs the extent and timing of infrastructure improvements.
5. Annexations over 5 acres shall obtain Master Plan approval at a public hearing before the Planning Commission prior to or concurrent with a Land Division or Site Plan and Design Review application. The Master Plan will identify the details of development including the overall impact of development on the city infrastructure and mitigating improvements.
6. The annexation is in the best interest of the City. Generally, the Commission may consider the annexation is in the best interest of the city if it meets two or more of the following criteria:
 - a. It provides a needed solution for existing problems, resulting from insufficient sanitation, water service, or other urban service-related problems; or
 - b. It provides land for development to meet urban needs including jobs and/or housing in an orderly and logical growth pattern; or
 - c. It provides needed routes for utility and transportation networks.
7. Compliance with applicable sections of ORS 222, and Metro Code Section 3.09 including a demonstration that the proposed annexation is timely, orderly, and efficient;
8. All natural hazards identified by the City, such as wetlands, floodplains, steep slopes and landslides, including those mapped and unmapped by the City, County, State or other government agencies are identified;
9. All historically designated and potentially eligible historic structures are identified;
10. Any significant adverse impacts on the economic, social and physical environment of the community or on specially designated open space, scenic, historic or natural resource areas identified in the Comprehensive Plan by urbanization of the subject property at time of annexation can be avoided or mitigated;
11. The extent to which the proposed annexation territory includes preservation of natural features, landforms and significant tree canopy since the date when the annexation application was filed with the City, excluding properties under farm or forest tax deferral or farm or forest practices as defined under ORS 30.930. Annexations which demonstrate efforts to avoid significant site

grading or tree removal will be viewed more favorably than those upon which such activities have occurred.

14.04.070 - Action by the Planning Commission.

The Planning Commission shall conduct a public hearing in the manner provided by OCMC 17.50.170(B) to evaluate the proposed annexation and make a recommendation to the City Commission regarding how the proposal has or has not complied with the factors set forth in OCMC 14.04.060 of this chapter. The Planning Commission shall provide findings in support of its recommendation.

14.04.080 - Action by City Commission.

- A. Upon receipt of the Planning Commission's recommendation, the City Commission shall hold a public hearing in the manner provided by OCMC 17.50.170(C). The City Commission shall endeavor to review all proposals prior to the City application deadline for submitting ballot measures to the voters, if applicable. The City Commission shall only set for an election annexations consistent with a positive balance of the factors set forth in OCMC 14.04.060. The City Commission shall make findings in support of its decision to schedule an annexation for an election.
- B. The City Commission reserves the right to enter into a development agreement with the owners of property that is proposed for annexation to the City.

14.04.090 - Legal advertisement of pending election.

After City Commission review and approval, the Community Development Director shall cause a legal advertisement describing the proposed annexation and pending election to be published in at least one newspaper of general circulation in the City in the manner provided by state election law. The advertisement shall be placed at least fourteen days prior to the election. The size of the advertisement shall be determined by the City Manager. The advertisement shall contain: a description of the location of the property, size of the property, its current zoning and any proposal for zone changes upon annexation, a general description of the potential land uses allowed, any required comprehensive plan text or map amendment or zoning ordinance text or map amendment, and where the City Commission's evaluation of the proposed annexation may be found. Any statement regarding development of the property proposed for annexation that is dependent upon future action by the City shall be accompanied by a disclaimer to the effect that such development would not be affected by the annexation vote.

14.04.100 - Election procedures.

- A. Pursuant to ORS 222.130(1), the ballot title for a proposal for annexation shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features. Notwithstanding ORS 250.035, the statement of chief purpose shall not exceed one hundred fifty words. The City Attorney shall prepare the ballot title wording.
- B. Pursuant to ORS 222.130(2), the notice of an annexation shall be given as provided in ORS 254.095 and 254.205, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed.
- C. Pursuant to ORS 222.111(7), two or more proposals for annexation of territory may be voted upon simultaneously; however, each proposal shall be stated separately on the ballot and voted on separately.

14.04.110 - Setting of boundaries and proclamation of annexation.

Upon approval by the voters of the proposed annexation, the City Commission, by ordinance, shall set the boundaries of the area to be annexed by a legal description, adopt findings, and proclaim the results of the election.

14.04.120 - Exceptions.

The City Commission may authorize an exception to any of the requirements of this chapter. An exception shall require a statement of findings that indicates the basis for the exception. Exceptions may be granted for identified health hazards and for those matters which the City Commission determines that the public interest would not be served by undertaking the entire annexation process. All annexations, however, shall be referred to the voters of the City except those exempted by state law. An exception referring to an annexation application that meets the approval criteria to an election cannot be granted except as provided for in the Oregon Revised Statutes.