

TO: City Council for February 5, 2018, Council Meeting
FROM: Paul Bilotta, Community Development Director *PB*
DATE: January 22, 2018
THROUGH: Mark W. Shepard, P.E., City Manager *MWS*
SUBJECT: Council Consideration of Annexation Procedures



Action Requested:

Staff recommends City Council conduct a public hearing to consider community comments regarding the City's policies, regulations, and procedures associated with voter-approved annexations and the information in this Staff memorandum. Following the close of the public hearing, Council will be asked to provide staff with direction on how to process current and future annexation applications while the City's appeal of Senate Bill 1573 remains active.

Discussion:

Included with the January 8, 2018, City Council packet for the Mary's Annexation public hearing was a January 3, 2018, memorandum from the City Attorney (Attachment CC-A). The subject of the memorandum concerns possible Council action regarding annexation applications received and reviewed during the pending appeal of Senate Bill 1573 (Attachment CC-B), which requires City Councils to make decisions on annexations without elections. After stating the present facts of the City's appeal case, including reference to the Benton County Circuit Court's denial for a requested stay, the City Attorney's memorandum provides three options for consideration by the Council on how to proceed with the three annexation applications:

1. The City Council could submit any annexation proposal to the voters, regardless of the June 29, 2017, ruling by the Circuit Court, and see if anyone objects, understanding there is a high likelihood the City will not succeed if a mandamus is filed.
2. The City Council could submit only those proposals where the applicant has agreed in writing to have the proposal submitted to the voters, and see if anyone objects, understanding the City is unlikely to succeed if a mandamus is filed.
3. Until and unless the Court of Appeals reverses the Benton County Circuit Court's decision, the City Council could make final decisions on annexation applications without referring the annexation to the voters. The Council should be aware that an appeal to LUBA, challenging such a Council decision for failure to follow our local regulations (the LDC) may also be challenging to defend. If the Council chooses this option, it may help community members to know the ordinance annexing the property is subject to referendum.

These options are based on City Council finding that each annexation request complies with the relevant Land Development Code criteria (Attachment CC-D). If the Council finds that any annexation request does not comply with the relevant criteria and therefore denies the request, no further action would be required at this time for that application.

Additionally, it is noted the original staff recommendation to Planning Commission for all three current annexation applications was to approve the requests, based on compliance with the annexation review criteria. As part of its deliberations, the Planning Commission supported the staff recommendations for all three annexations, without taking an official position on whether the City Council should forward the annexations to voters for approval. Staff is providing this point of clarification, due to inaccuracies

contained in the Planning Commission Notices of Disposition and the staff PowerPoint presentation to City Council during the public hearing on the Caldwell Farms Annexation. Staff have provided copies of the annexation and May 2018 election schedule for reference (Attachment CC-C).

With the current voter approval process, there is a tight timeline for action by the City Council in order to get the issue on the appropriate ballot (Attachment CC-C). However, unlike most land use actions, an annexation is not subject to any tight approval timelines by state statutes. If the Council chooses to proceed without voter approval, the extreme urgency of final action ceases since we are not bound by a ballot process. The Council could therefore have the option to delay making a decision on one or more applications in order to provide time to negotiate an annexation or development agreement with an applicant. This type of agreement would allow more detailed plans, phasing, and responsibilities for infrastructure construction to be spelled out and agreed to including the potential involvement of third parties, such as Benton County.

The City Attorney's memorandum provides a recommended course of action, noted here:

"Should the Council find that a proposal meets the relevant criteria from the land development code and complies with all other relevant laws of the City, the Council is required to enact an ordinance annexing the property as set out in SB 1573."

Optional Motions:

1. I move for the City Council to make final decisions on annexation applications that meet the requirements of ORS 222.127 without submitting the proposal to the voters, until and unless the Court of Appeals reverses the decision of the Benton County Circuit Court.
 - a. I also move to place Resolution 2016-14 on the agenda for the City Council's next meeting for amendment in a manner that reflects the prior motion.
2. I move the City submit all annexation proposals that meet the relevant land use criteria to the voters, consistent with Resolution 2016-14 and notwithstanding the decision by the Benton County Circuit Court that is currently under appeal.
3. I move for the City Council to submit to the voters only those annexation proposals where the applicant has clearly agreed in writing to have the proposal submitted to the voters.
 - a. I also move to place Resolution 2016-14 on the agenda for the City Council's next meeting for amendment in a manner that reflects the prior motion.

Budget Impact:

If the Council decides Annexation requests should not be forwarded to voters, staff anticipate a potential savings of approximately \$1,000 per Annexation request due to the elimination of the newspaper notification requirement, in addition to personnel savings associated with no longer needing to coordinate the elections process with the Benton County Elections office.

Attachments:

- | | |
|-----------------|--|
| Attachment CC-A | January 3, 2018, Memorandum from City Attorney to City Council (includes Resolution 2016-14) |
| Attachment CC-B | ORS 222 – As Amended by Senate Bill 1573 |
| Attachment CC-C | Annexation Schedules for Current Annexation Applications (Marys, Caldwell Farms, and Good Samaritan) |
| Attachment CC-D | Land Development Code Chapter 2.6 |



CORVALLIS CITY ATTORNEY

456 SW Monroe, #101

Corvallis, OR 97333

Telephone: (541) 766-6906

Fax: (541) 752-7532

TO: City Council
FROM: Jim Brewer, City Attorney
DATE: January 3, 2018
SUBJECT: Council action regarding annexations during pending appeal of SB 1573

Issue:

The City is currently a party to litigation regarding the constitutionality of SB 1573, which requires City Councils to make decisions on annexations without elections. The City challenged the constitutionality of SB 1573 in Circuit Court. As a reminder, the reason for the City to challenge SB 1573 was to preserve home rule authority. The City Council did not endorse voter approval of annexations as a good policy decision. There is no stay—meaning that SB 1573 is good law in Benton County while the appeal is pending. The City Council is currently scheduled to hold public hearings and make decisions on pending annexation applications. Caldwell Farms, one of the applicants, is also a party to the current litigation with the City.

Discussion:

Staff and the Planning Commission have correctly followed the direction provided by the Council in Resolution 2016-14, and sought the voluntary agreement of property owners to submit annexation proposals to the voters, as the City Charter and Land Development Code require. Although it was the intention of the City Council at the time of the resolution to refer all annexation proposals to the voters, given the decision by the Benton County Circuit Court and the lack of a stay, any party with standing could seek a writ of mandamus to order the City Council to approve the annexations without an election. It would be a challenge to successfully defend such a case, even if we had a written agreement from the property owner. Additional context is provided in the attached documents. With this change in circumstances, we have identified three options for the Council to consider.

Options:

1. The City Council could submit any annexation proposal to the voters, regardless of the ruling by the Court, and see if anyone objects, understanding that there is a high likelihood that we will not succeed if a mandamus is filed.
2. The City Council could submit only those proposals where the applicant has agreed in writing to have the proposal submitted to the voters, and see if anyone objects, understanding that we are unlikely to succeed if a mandamus is filed.
3. Until and unless the Court of Appeals reverses the Benton County Circuit Court's decision, the City Council could make final decisions on annexation applications without referring the annexations to the voters. The Council should be aware that an appeal to LUBA, challenging such a Council decision for failure to follow our local regulations (the LDC) may also be challenging

to defend. If the Council chooses this option, it may help citizens to know that the ordinance annexing the property is subject to referendum.

After discussion with staff, we agree that whichever approach the Council takes, the Council should review the applications with the assumption that voters will not be able to weigh in, as a Court could step in and remove that option. Instead of assuming that voters will make decisions that resolve whether something is in the public interest, the Council should give each application and each criterion a heightened degree of scrutiny.

Recommendation:

Given the resources that could be required to defend the City in mandamus actions, until the appeal is resolved (and notwithstanding the City Charter and the Land Development Code provisions to the contrary), state law currently prohibits the City from submitting annexation proposals to the voters. Consequently, should the Council find that a proposal meets the relevant criteria from the land development code and complies with all other relevant laws of the City, the Council is required to enact an ordinance annexing the property as set out in SB 1573.

Budget Impact:

Largely speculative. City services will be extended to annexed areas. The costs of some of these services may be offset by some increase in property taxes. Increased infrastructure needs will be offset by systems development and connection fees. Depending on the nature and value of the ultimate development, there may be considerable budget impact, or none at all.

Attachments:

- A. Resolution 2016-14
- B. CAO May 2, 2016 Memo to Council
- C. BCCC Decision on SB 1573
- D. BCCC Order denying the City's request for a stay
- E. City Council worksession packet for March 22, 2016

RESOLUTION 2016-14

A RESOLUTION RELATED TO VOTER APPROVED ANNEXATIONS AND SENATE BILL 1573, DIRECTING STAFF TO COMPLY WITH SECTION 53 OF THE CITY CHARTER AND CORVALLIS LAND DEVELOPMENT CODE

Minutes of the May 2, 2016 Corvallis City Council meeting, continued.

A resolution submitted by Councilor Hann.

WHEREAS, the Constitution of the State of Oregon limits the grant of power to the Oregon Legislature by reserving to the people the right of initiative and referendum, and further reserves to the voters of cities the right of initiative and referendum on local, special and municipal legislation, and further reserves to the voters of cities the right to adopt and amend municipal charters; and

WHEREAS, the people of the City of Corvallis voted and exercised the power under the Constitution and laws of the State of Oregon to enact a home rule charter; and

WHEREAS, the people of the City of Corvallis voted and exercised the power of initiative to amend the Charter by enacting Section 53, which requires that any annexation to the City of Corvallis be approved by a prior majority vote among the electorate, unless mandated by State law; and

WHEREAS, the City of Corvallis adopted a Comprehensive Plan and a Land Development Code, acknowledged by the State of Oregon as consistent with Statewide Planning Goals and State land use laws; and

WHEREAS, consistent with the City Charter, both the Comprehensive Plan and Land Development Code require that proposed annexations which comply with the land use criteria, except for those annexations mandated due to health hazards, must be referred to the voters for approval by a majority of the electorate, prior to being final; and

WHEREAS, in 2016 the Oregon Legislature passed an emergency law, Senate Bill 1573 (Chapter 51, Oregon Laws 2016), directing that annexation decisions must be made by the governing body of cities, and may not be made by the voters; and

WHEREAS, Senate Bill 1573 acts outside of the authority granted to the legislature by the Oregon Constitution by attempting to effectively amend the city charters of Corvallis and other home rule cities, and by frustrating the rights of the voters of cities to exercise their home rule authority; and

WHEREAS, Senate Bill 1573 conflicts with the City Charter, and the public, City Staff and applicants need to understand how the City of Corvallis will proceed with annexation proposals;


NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CORVALLIS RESOLVES that notwithstanding Senate Bill 1573, the City Council intends to refer all annexation approvals to the voters as required by the City Charter, Comprehensive Plan and Land Development Code; and

BE IT FURTHER RESOLVED that City Staff are directed to seek applicants' voluntary agreements to submit annexation proposals to the voters as required by the City Charter; and

BE IT FURTHER RESOLVED that City Staff are directed to comply with the Charter, Comprehensive Plan and Land Development Code of the City of Corvallis by processing all proposals for annexation without regard to Senate Bill 1573; and

BE IT FURTHER RESOLVED that the City Manager and City Attorney are directed to seek assistance, resources and support from other cities and organizations in order to defend the City Charter and the rights of the voters of Corvallis.

BE IT FURTHER RESOLVED that the City Manager and City Attorney are directed to seek assistance, resources and support from other cities and organizations in order to defend the City Charter and the rights of the voters of Corvallis and to file appropriate legal action on behalf of the City to do so.


Councilor

Upon motion duly made and seconded, the foregoing resolution was adopted, and the Mayor thereupon declared said resolution to be adopted.

TO: City Council for May 2, 2016
FROM: Jim Brewer, City Attorney *JB*
DATE: April 26, 2016
THROUGH: Mark W. Shepard, P.E., City Manager *MWS*
SUBJECT: Senate Bill 1573 Resolution



Action Requested:

Attached is a draft resolution to provide policy direction from the City Council regarding Senate Bill 1573. Approval of a resolution is requested.

Discussion:

As discussed at the April 12, 2016 work session, Senate Bill 1573 requires the legislative bodies of cities to annex territory adjacent to the City limits without submitting the annexation proposal to the electors of the city, notwithstanding local charter provisions or ordinances requiring a vote. While good policy arguments both support and oppose voter approved annexation, the City Council's primary question about SB 1573 should be whether the legislature has exceeded its authority by infringing on constitutional rights to initiative, referendum and home rule for cities. As we discussed in the work session, regardless of the policy direction the City Council makes regarding SB 1573, that direction is likely to lead to litigation. With that in mind, no matter the decision the City Council makes, we recommend that the City Council adopt a resolution before any specific annexation proposal is presented to the Council. Such a resolution will clearly state the policy decision, direct City Staff, and inform the public and applicants how the City of Corvallis will process and decide proposed annexations.

After considering the Oregon Constitution, state law including SB 1573, relevant case law regarding home rule issues, the Corvallis Charter, the Comprehensive Plan and the Land Development Code, our opinion is that the City Council should defend the Constitutional rights of voter initiative and referendum, and home rule, and defend the City Charter. If the matter is litigated, no result can be certain, other than the fact that resources will certainly be required (although other interested parties may be willing to participate or contribute resources). A draft resolution reciting the constitutional issues with SB 1573 and directing Staff to process annexations for voter approval is the attachment to the staff report. If the City Council decides to follow SB 1573 and approve annexations without a vote of the people, then the City Council can direct the City Attorney to draft an appropriate resolution reflecting that decision.

Options:

1. Review and adopt the attached resolution.
2. Direct the City Attorney to draft a resolution stating the City Council's decision to follow SB 1573.
3. Direct the City Attorney to draft a resolution stating a different decision by the City Council.

Recommendation:

Review and adopt the attached resolution.

Staff and the City Attorney are available to answer any questions you might have.

Attachments:

Draft Resolution (Attachment A)

RESOLUTION 2016-_____

A RESOLUTION RELATED TO VOTER APPROVED ANNEXATIONS AND SENATE BILL 1573, DIRECTING STAFF TO COMPLY WITH SECTION 53 OF THE CITY CHARTER AND CORVALLIS LAND DEVELOPMENT CODE

Minutes of the _____, Corvallis City Council meeting, continued.

A resolution submitted by Councilor _____.

WHEREAS, the Constitution of the State of Oregon limits the grant of power to the Oregon Legislature by reserving to the people the right of initiative and referendum, and further reserves to the voters of cities the right of initiative and referendum on local, special and municipal legislation, and further reserves to the voters of cities the right to adopt and amend municipal charters; and

WHEREAS, the people of the City of Corvallis voted and exercised the power under the Constitution and laws of the State of Oregon to enact a home rule charter; and

WHEREAS, the people of the City of Corvallis voted and exercised the power of initiative to amend the Charter by enacting Section 53, which requires that any annexation to the City of Corvallis be approved by a prior majority vote among the electorate, unless mandated by State law; and

WHEREAS, the City of Corvallis adopted a Comprehensive Plan and a Land Development Code, acknowledged by the State of Oregon as consistent with Statewide Planning Goals and State land use laws; and

WHEREAS, consistent with the City Charter, both the Comprehensive Plan and Land Development Code require that proposed annexations which comply with the land use criteria, except for those annexations mandated due to health hazards, must be referred to the voters for approval by a majority of the electorate, prior to being final; and

WHEREAS, in 2016 the Oregon Legislature passed an emergency law, Senate Bill 1573 (Chapter 51, Oregon Laws 2016), directing that annexation decisions must be made by the governing body of cities, and may not be made by the voters; and

WHEREAS, Senate Bill 1573 acts outside of the authority granted to the legislature by the Oregon Constitution by attempting to effectively amend the city charters of Corvallis and other home rule cities, and by frustrating the rights of the voters of cities to exercise their home rule authority; and

WHEREAS, Senate Bill 1573 conflicts with the City Charter, and the public, City Staff and applicants need to understand how the City of Corvallis will proceed with annexation proposals;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CORVALLIS RESOLVES that notwithstanding Senate Bill 1573, the City Council intends to refer all annexation approvals to the voters as required by the City Charter, Comprehensive Plan and Land Development Code; and

BE IT FURTHER RESOLVED that City Staff are directed to seek applicants' voluntary agreements to submit annexation proposals to the voters as required by the City Charter; and

BE IT FURTHER RESOLVED that City Staff are directed to comply with the Charter, Comprehensive Plan and Land Development Code of the City of Corvallis by processing all proposals for annexation without regard to Senate Bill 1573; and

BE IT FURTHER RESOLVED that the City Manager and City Attorney are directed to seek assistance, resources and support from other cities and organizations in order to defend the City Charter and the rights of the voters of Corvallis.

Councilor

Upon motion duly made and seconded, the foregoing resolution was adopted, and the Mayor thereupon declared said resolution to be adopted.



CIRCUIT COURT OF OREGON
FOR BENTON COUNTY

MATTHEW J. DONOHUE
CIRCUIT JUDGE

Attachment CC-A, Page 9 of 55

BENTON COUNTY COURTHOUSE
POST OFFICE BOX 1870
CORVALLIS, OREGON 97339

(541) 766-6843

Filed

FEB 24 2017

Benton County Circuit Court
Corvallis, Oregon
Entered

February 24, 2017

James K. Brewer (via Email only)
Attorney at Law

J. Nicole DeFever (via Email only)
Attorney at Law

David E. Coulombe (via Email only)
Attorney at Law

Sean O'Day (via Email only)
Attorney at Law

Chad Jacobs (via Email only)
Attorney at Law

Caldwell Farms, LLC
c/o Lynn Nordhausen, Reg Agent
2773 Titleist Circle
Corvallis, OR 97333

Larry & Teresa Desaulniers
830 NE Lawndale Place
Corvallis, OR 97330

Michael & Patricia Galpin
7906 NE 131st Street
Kirkland, WA 98034

Eva & Javier Ixtlahuac
810 NE Lawndale Place
Corvallis, OR 97330

George Stovall
825 NE Lawndale Place
Corvallis, OR 97330

Edward Trueblood
815 NE Lawndale Place
Corvallis, OR 97330

Re: City of Corvallis v. State of Oregon, Kate Brown, Governor; Jeanne P. Adkins, Secretary of State; Jim Rue, Oregon DLCD; Caldwell Farms, LLC; Larry & Teresa Desaulniers; Michael & Patricia Galpin; Eva & Javier Ixtlahuac; George Stovall; and Edward Trueblood - Benton County Circuit Court Case No. 16CV17878

Dear Counsel and Parties:

This matter comes before the court on State Defendants' Motion For Summary Judgment, Plaintiff City of Corvallis' Cross-Motion For Summary Judgment and Plaintiff-Intervenors City of Philomath's and League of Oregon Cities' Cross-Motions For Summary Judgment. The court heard oral argument on January 20, 2017 and took the matter under advisement on February 3, 2017 following the parties' respective submissions on State Defendants' Motion To Strike declarations supporting the City of Corvallis' Cross-Motion For Summary Judgment. Having reviewed the case file, the parties' respective

filings, and having heard the arguments at hearing, the court makes the following findings and determinations.

Motion To Strike

State Defendants move to strike the Declarations of Patrick Caran, George Wisner, Maria Wilson, Jack Wolcott, W. Kent Buys, William Koenitzer, Marilyn Koenitzer, M. Boyd Wilcox and Stephen McLaughlin (hereinafter referred to collectively as “Citizen and Former Citizen Declarations”) submitted by Plaintiff City of Corvallis in support of its Cross-Motion For Summary Judgment. State Defendants argue that the declarations do not comply with ORCP 47D because (1) they address issues outside of the declarants’ personal knowledge and (2) they are irrelevant for the purpose of demonstrating voter intent in the 1976 Corvallis city election.

Under ORCP 47D affidavits or declarations supporting or opposing summary judgment “shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant or declarant is competent to testify to the matters stated therein.” Declarations that do not meet this standard may be stricken. *See Dority v. Hiller*, 162 Or App 353 (1999).

The Citizen and Former Citizen Declarations are all essentially identical form declarations stating, in pertinent part, (1) the declarant voted in the November 2, 1976 Corvallis city election in which voters approved the annexation charter amendment, (2) the declarant understood the “unless mandated by State law” provision of the proposed annexation charter amendment to be a narrow exception limited to annexation for health hazards, (3) the State Defendants’ current interpretation of that text is not consistent with their view or the view of other citizens of Corvallis who approved the amendment in 1976 and (4) the declarant’s understanding of the primary purpose of the amendment was to give the citizens of Corvallis the authority to decide on annexations when a land owner sought to have their property annexed into the City’s boundary. To the extent that the Citizen and Former Citizen Declarations purport to identify the intent of other voters in the 1976 election, the court grants State Defendant’s Motion To Strike as nothing in any of the declarations provide any foundation demonstrating that those statements are based on the declarant’s personal knowledge. OEC 602 (“a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”).

As to the declarants’ statements of their own understanding of the scope of the annexation amendment, a court is generally precluded from considering post-enactment statements when determining the legislative intent of a statute. *Salem-Keizer Association Of Classified Employees v. Salem-Keizer School District 24J*, 186 Or App 19, 26-28 (2003). While *Salem-Keizer Association Of Classified Employees v. Salem-Keizer School District 24J* dealt with determining the legislative intent of a statute enacted by the legislature, courts should apply a similar legislative intent analysis for voter-approved legislation. *Hazell v. Brown*, 352 Or 455, 465 (2012). This includes confining the court’s analysis to the text of the initiative and any other informational material that existed at the time of the election. *State v. Allison*, 143 Or App 241, 251-52 (1996). The Citizen and Former Citizen Declarations were not part of any information available to voters during the November, 1976 election but are instead individual recollections of each declarant as to their understanding of the intent of the proposed charter amendment. Under *State v. Allison*, such post-hoc recollections are not relevant to any determination of voter intent in November, 1976 and are therefore not admissible evidence under ORCP 47D. OEC 402 (“Evidence which is not

relevant is not admissible”). The Court grants State Defendant’s Motion To Strike the Citizen and Former Citizen Declarations.¹

State Defendants also move to strike the declaration of Scott Fewel (hereinafter referred to as “Fewel Declaration”) submitted by the City of Corvallis in support of its Cross-Motion For Summary Judgment. State Defendants argue that the Fewel Declaration suffers from the same deficiencies found in the Citizen and Former Citizen Declarations and it contains inadmissible hearsay. The Fewel Declaration discusses Mr. Fewel’s understanding of (1) the purpose behind the formation of the group that placed the 1976 City of Corvallis annexation charter amendment on the ballot and (2) a conversation between Mr. Fewel and third parties regarding the intent of the drafters of the annexation amendment when including the “unless mandated by State Law” text. The court agrees that the portion of the Fewel Declaration discussing his conversation with third parties is hearsay that is not admissible. The remainder of the declaration suffers from the same foundation and relevance problems identified above. The court therefore grants State Defendant’s Motion to Strike the Fewel Declaration as it does not comply with the requirements of ORCP 47D.

Motions For Summary Judgment

State Defendants move for summary judgment against Plaintiff’s and Plaintiff-Intervenors’ (hereinafter collectively as “Plaintiffs”) claim seeking a declaration that 2016 Or Laws Chapter 51 (hereinafter “SB 1573”) is unconstitutional and their request for an injunction preventing its implementation. Plaintiffs cross-move for summary judgment on their claims. Having reviewed the parties’ respective summary judgment filings, the court determines that there is no genuine issue of material fact precluding an award of summary judgment.

“As Applied” Constitutional Claim

State Defendants argue that Plaintiffs’ constitutional “as applied” challenge fails because they have not demonstrated that State Defendants have taken any action to enforce SB1573. “[A]n as-applied challenge asserts that executive officials, [* * *], violated the constitution when they enforced the ordinance.” *City of Eugene v. Lincoln*, 183 Or App 36, 41 (2002). Plaintiffs support their “as applied” challenge with an April 18, 2016 letter from the Department of Land Conservation and Development (DLCD). The letter, addressed to all local governments, state agencies and interested persons, discussed land use legislation enacted during the 2016 legislative session. The letter, among other things, notified recipients that SB 1573 may require cities to change their comprehensive plans or land use ordinances and that it may affect city charters and codes. The letter does not require any city to make any changes to its charter or codes to comply with SB 1573 nor does it establish any penalty for cities that refuse to comply with it if it is inconsistent with their charter. The letter is therefore not an attempt by DLCD to compel compliance with SB 1573 but is instead a notification to cities that the new law may impact their charters and codes. The letter does not support Plaintiffs’ “as applied” challenge because it does not make any attempt to impose any penalty on Plaintiffs for noncompliance with SB 1573 nor does it impose any restrictions on them to

¹ Denying State Defendants’ Motion To Strike these declarations regarding the declarant’s intent would not substantially alter the court’s legal analysis regarding voter intent. The statements in the Citizen and Former Citizen Declarations regarding their understanding of the scope of the phrase “unless mandated by State law” at the time of the election represents the views of nine voters in a city-wide election. Any attempt to determine the intent of the majority of the voters in the November, 1976 election based on such a small sample size would be an exercise in pure speculation.

compel their compliance. See *City of Eugene v. Lee*, 177 Or App 492 (2001) (as applied challenge based on arrest and conviction); *Clarke v. OHSU*, 206 Or App 610 (2006) (as applied challenge based on court substitution of defendants in tort case). Plaintiffs' "as applied" challenge is therefore not supported by any evidence in the record and State Defendants are entitled to summary judgment on it as a matter of law.

Facial Constitutional Claim

Plaintiffs also allege that SB 1573 is facially unconstitutional. Under Section 2 of SB 1573,

“Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city shall annex the territory without submitting the proposal to the electors of the city if:

- (a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015;
- (b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;
- (c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or body of water; and
- (d) The proposal conforms to all other requirements of the city ordinances.”

Plaintiffs argue that Section 2 of SB 1573 (1) violates Article XI, Section 2 of the Oregon Constitution by infringing on their Home Rule decision making authority; (2) impermissibly infringes on Article IV, Section 1 of the Oregon Constitution by restricting municipal citizens' right to vote on annexations and; (3) does not aid or facilitate multiple articles of the Oregon Constitution.² State Defendants argue that Plaintiffs' requests for declaratory and injunctive relief should be denied because (1) voters have no constitutional right to vote on municipal annexations; (2) Plaintiffs' respective city charters do not conflict with SB 1573 and; (3) Plaintiffs' "aid or facilitate" claim fails because SB 1573 does not impact any constitutional provisions involving either a city's Home Rule authority or citizens' right to vote on municipal referenda.

Statutory Analysis

The court first addresses State Defendants' argument that Plaintiffs' charters do not conflict with SB 1573. *Leo v. Keisling*, 327 Or 556, 562 (1998) (courts should address subconstitutional grounds for relief before addressing constitutional issues). State Defendants argue that SB 1573 does not conflict with Plaintiffs' city annexation charter provisions because those provisions allow for annexation without a citizen vote if required by state law. Section 53 of the Corvallis Charter establishes the requirement that annexations be approved by citizen vote “[u]nless mandated by State law.” Section 11.1 of the Philomath Municipal Code creates a charter amendment that is substantially identical to Section 53 of the Corvallis Charter. In *Pieper v. Health Division*, 288 Or 551 (1980), the Supreme Court determined that a statute requiring the annexation of property without a citizen vote to address health hazards did not conflict with the Corvallis City Charter because the charter allowed for annexation without a vote when mandated by State law. 288 Or at 555. In *Mid-County Future Alternatives Committee v. City of Portland*, 310 Or 152

² Plaintiff City of Corvallis and Plaintiff-Intervenor City of Philomath raise this “aid or facilitate” claim. Plaintiff-Intervenor League of Cities does not join them in that claim.

(1990) the Supreme Court found no conflict between a State law allowing a “triple majority” annexation without a citizen vote because the charters of the cities of Portland and Gresham both had text permitting such State legislative exemptions. 310 Or at 163-64. Under *Pieper* and *Mid-County*, Sections 53 of the Corvallis Charter and Section 11.1 of the Philomath Municipal Code do not conflict with SB 1573 because both specifically allow for annexation without a citizen vote if it is mandated by statute.

Plaintiffs respond to this interpretation of *Pieper* and *Mid-County* by asserting that the voters who approved the Corvallis and Philomath annexation charter amendments in 1976 and 1995 believed that the “unless mandated by State law” or similar provisions in city charters only implicated State laws mandating annexation that existed at the time the cities approved their charter amendments.

In determining the proper interpretation of a city charter, the court should apply the same methodology used to interpret other legislation. *Brown v. City of Eugene*, 250 Or App 132, 136-37 (2012). This includes determining voter intent by examining the text and context of the charter amendment as well as any information that may have been available to voters at the time of the election. *Id.* In the case of the Corvallis and Philomath charter amendment elections, no party submitted any admissible evidence demonstrating that the voters in either election had access to any information interpreting the scope of the phrase “unless mandated by State law.” The court therefore must rely primarily on the text and context of the charter amendments to determine voter intent.

Plaintiffs argue that, in order to correctly interpret the voters’ intent when approving the Corvallis and Philomath annexation amendments, the court should examine the amendments in context with those provisions of the Corvallis and Philomath city charters requiring that each charter be construed liberally “to the end that the City may have all powers that cities may assume pursuant to the laws and to the municipal Home Rule provisions of the Constitution of the State of Oregon.” However, cities do not have the authority under Article XI, Section 2 to annex property outside their boundaries but instead derive that authority from the legislature. *Mid-County Future Alternatives Committee v. City of Portland*, 310 Or 152, 161-163 (1990). In addition, the *Mid-County Future Alternatives Committee* Court determined that nothing in the Oregon Constitution grants citizens the right to vote on municipal annexations. 310 Or at 166. Further, a city does not have any common-law authority under its charter and it cannot exceed any authority granted to it by statute. *DeFazio v. Washington Public Power Supply System*, 296 Or 550, 580 (1984). Examining Plaintiffs’ cited text against this case law arguably cuts against their contextual argument regarding voter intent because voters could have believed that annexation authority in a city charter must be consistent with state annexation statutes as they existed at the time of the elections or as they may change in the future because that is the body of State law defining the extent of the city’s annexation authority at any given time. The cited text is therefore ambiguous as to voter intent.

In examining the text of the annexation amendments, the court should give words their plain, natural and ordinary meaning. *PGE v. BOLI*, 317 Or 606, 611 (1993). As discussed above, the *Pieper* Court interpreted the phrase “unless mandated by State law” as used in the Corvallis Charter as allowing statutory exemptions to annexation voter requirements. The question remaining after applying the rationale in *Pieper* is whether a State statutory exemption must have been enacted at the time the annexation amendments were approved by voters or whether subsequently-enacted statutory exemptions would also apply. In *Seale v. McKinnon*, 215 Or 562 (1959) the Supreme Court examined the effect prospective rule changes may have on existing statutes referencing those rules. The *Seale* Court determined that a statutory provision specifically referencing another body of law should be interpreted as

only adopting the law as it existed at the time of legislative enactment. 215 Or at 572. In contrast, a general reference to another body of law should be interpreted as incorporating both the law that existed at the time of enactment as well as any subsequent changes to the law. *Id.* Under the rationale in *Pieper* and *Seale*, the “unless mandated by State law” text in the Philomath and Corvallis annexation charter amendments is a broad reference that should be interpreted as including any statutory citizen vote exemptions existing at the time of enactment as well as any subsequently enacted exemptions such as SB 1573.

Plaintiffs argue that interpreting the “unless mandated by State law” text in their annexation charter amendments as including subsequently-enacted statutes violates constitutional non-delegation principles. Article I, Section 21 of the Oregon Constitution states that,

“No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested.”

Article I, Section 21 “prohibit[s] laws that delegate the power of amendment to another governmental entity.” *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292, 311 (1999). As an initial matter, there is a question as to whether the phrase “unless mandated by State law” as used in Plaintiffs’ annexation charter amendments delegates anything to the State. As mentioned above, Article XI, Section 2 of the Oregon Constitution does not grant a city the authority to annex property. *Mid-County Future Alternatives Committee v. City of Portland*, 310 Or 152, 161-163 (1990). That annexation authority therefore comes from the State which, in granting that authority, may establish procedures a city must follow for annexation. *Id.* A city that requires a vote on annexations unless another procedure is mandated by State law does not appear to be delegating any authority to the legislature but is instead acknowledging that the legislature authorized the city to annex land and may modify annexation procedures.

In addition, the phrase “unless mandated by State law” does not violate Article I, Section 21 of the Oregon Constitution because it articulates a complete legislative policy. In their cross motions for summary judgment Plaintiffs cite *Osborn v. Psychiatric Security Review Board*, 325 Or 135 (1997), *Hillman v. N. Wasco County PUD*, 213 Or 264 (1958) and *Advocates for Effective Regulation v. City of Eugene*, 160 Or App 292 (1999) as supporting their non-delegation arguments. In all three cases, the appellate courts determined that specific references to another body of law or information in a specific rule or ordinance must be interpreted as adopting that body of law or information as it existed at the time the rule or ordinance took effect. Those cases did not deal with applying non-delegation principles to a general reference to another body of law. In *State v. Long*, 315 Or 95 (1992) the Supreme Court determined that the legislature “cannot delegate its power to make law, but that it can delegate, at least to an agency of government, the power to determine the existence of facts or circumstances mentioned in the law upon which the law will become operative.” 315 Or at 100. The *Long* Court determined that such a delegation is constitutionally permissible because, in doing so, the legislature had not delegated its power to make law, but only the power to determine the existence of facts or circumstances mentioned in the law upon which it will become operative. *Id.* In *City of Damascus v. Brown*, 266 Or App 416 (2014) the Court of Appeals stated that,

“[t]he test for determining whether a particular enactment is an unlawful delegation of legislative authority [* * *] is whether the enactment is complete when it leaves the legislative halls. A legislative enactment is complete if it contains a full expression of legislative policy and sufficient procedural safeguards to protect against arbitrary application.”

266 Or App at 443. Plaintiffs’ charter amendments requiring annexation by citizen vote unless another method is mandated by State law evidence an intent that a citizen vote by annexation will be required unless State law mandates otherwise. That is a complete legislative policy determination under *City of Damascus v. Brown* because any change in State law would not have any impact on the policy itself which describes the role state law plays in a city’s annexation decision making process. Under *Long* and *City of Damsacus* interpreting the phrase “unless mandated by State law” to include subsequently-enacted statutes does not violate Article I, Section 21 of the Oregon Constitution. State Defendants are entitled to judgment as a matter of law against Plaintiff City of Corvallis and Plaintiff-Intervenor City of Philomath because SB 1573 does not conflict with their respective annexation charter amendments.

Constitutional Analysis

A determination that SB 1573 does not conflict with the Corvallis and Philomath city charters does not resolve all of the constitutional issues raised by Plaintiff-Intervenor League of Cities (LOC). While most of the cities represented by LOC have similar “unless mandated by State law” text in their charter annexation provisions, two cities, Mollala and Lake Oswego, do not have such an exemption. SB 1573 therefore conflicts with those cities’ charters requiring a citizen vote on all annexations. The court therefore must determine whether SB 1573 impermissible infringes on those cities’ Article XI, Section 2 Home Rule authority or on their citizens’ Article IV, Section 1 voting rights.

LOC argues that SB 1573 impermissibly alters the structure of city government by mandating an annexation process that is inconsistent with a city charter requiring a citizen vote. While Plaintiff LOC acknowledges that the legislature has the authority to control and direct annexation, it argues that it cannot exercise that authority in a manner that interferes with any internal decision making process a city has for determining whether, or how, to annex property.

As mentioned above, cities do not have the authority under Article XI, Section 2 to annex property outside their boundaries but instead derive that authority from the legislature. *Mid-County Future Alternatives Committee v. City of Portland*, 310 Or 152, 161-163 (1990). Because the legislature provides the authority for annexation, it also may establish the annexation procedure a city must follow. *Id.* In addition, the *Mid-County Future Alternatives Committee* Court determined that nothing in the Oregon Constitution grants citizens the right to vote on municipal annexations. 310 Or at 166. Any statute requiring a city to annex property without a citizen vote therefore does not impermissibly infringe on the constitutional Home Rule authority of a city to annex land or on any constitutional right of city residents to vote on annexation.

The remaining question is whether SB1573 is unconstitutional because it intrudes into a city’s Article XI, Section 2 authority to establish its own process for making internal government decisions. When determining whether a statute conflicts with an existing city charter amendment,

“the validity of a state law vis-a-vis local entities does not depend upon a source of authority for the law, nor on whether a locality may have authority to act on the same subject; it depends on the limitations imposed by article XI, section 2”

City of LaGrande v. Public Employees Retirement Board, 281 Or 137, 142 (1978). This is because, when it comes to enacting State law, “the legislature has plenary authority except for such limits as may be found in the constitution or in federal law.” *Id.* Under the analysis articulated in *City of LaGrande v. PERB*,

“When a statute is addressed to a concern of the state with the structure and procedures of local agencies, the statute impinges on the powers reserved by the amendments to the citizens of local communities. Such a state concern must be justified by a need to safeguard the interests of persons or entities affected by the procedures of local government.

Conversely, a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form. In that case, such a state law must yield in those particulars necessary to preserve that freedom of local organization.”

Mid-County Future Alternatives Committee v. City of Portland, 310 Or at 160-61 (quoting *City of LaGrande v. Public Employees Retirement Board*, 281 Or 137, 142 (1978)).

LOC argues that SB 1573 impermissibly intrudes on two aspects of a city’s constitutional Home Rule authority. First, it impacts a city’s internal decision making process by excluding municipal voters from some annexation decisions. Second, it requires a city to modify its boundary by annexing property if a proposed annexation meets the criteria established in SB 1573. LOC premises its argument on the proposition that a decision whether to annex property and the decision making process for annexation are both part of a city’s Home Rule “intramural” authority. State Defendants argue that annexations are an “extramural” exercise of authority and that the legislature can place procedural requirements on a city, including a requirement that annexation occur without a citizen vote.

In determining a city’s constitutional Home Rule decision making authority in a given case, a court must determine whether the city is exercising intramural or extramural authority. As explained in *State ex rel Mullins v. Port of Astoria*, 79 Or 1, (1916),

“Powers exercisable by cities and towns may be placed in two separate classes, which, for the sake of brevity and the want of better terms, will be designated as: (1) Intramural; and (2) Extramural. When the legal voters of a city enact municipal legislation which operates only on themselves and for themselves, and which is confined within and extends no further than the corporate limits, then such voters are exercising intramural authority. When, however, the legal voters of a city attempt to exercise authority beyond the corporate limits of their municipality, they are using an extramural power.”

State ex rel Mullins v. Port of Astoria, 79 Or at 17. “Extramural authority [***] is not available to the legal voters of cities and towns, unless the right to exercise it has first been granted either by a general law

enacted by the legislature or by legislation initiated by the people of the whole state.” *Id.* at 19. While the *Mid-County Future Alternatives Committee* Court concluded that the State had the authority to establish conditions on a city’s legislatively-granted extramural annexation authority, it also noted that,

“Even though a city must follow a legislatively-approved procedure to annex territory, it does not follow that the legislature can decree any annexation for any reason. There still is room to argue, [* * *], that the borders of a municipal corporation are an integral part of the corporate charter which cannot be altered by the legislature.”

310 Or at 163.

In determining whether SB 1573 violates Article XI, Section 2, it is helpful to put it in context with existing land use law. *State v. Gaines*, 346 Or 160, 170-172 (2009) (court should examine, text, context and legislative history as primary factors for determining legislative intent). SB 1573 is limited to land that a city has already designated as part of its Urban Growth Boundary (UGB). “A UGB is the part of the land use map in a city’s comprehensive plan that demarcates the area around a city that is available for expansion and future urban uses.” *1000 Friends of Oregon v. Land Conservation and Development*, 244 Or App 239, 241 (2011). Land within a city’s UGB but outside its boundary is classified as urbanizable land necessary for the expansion of that city’s urban area. *1000 Friends of Oregon v. Wasco County Court*, 299 Or 344, 350-51 (1985). Once land is included within a city’s UGB, it is then considered as being available to that city for conversion to urban use as necessary and consistent with the city’s comprehensive land use plan. *Id.* at 351-52. LCDC’s Goal 14 addresses urbanization and UGBs. Goal 14 was promulgated “[t]o provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.”

SB1573 requires a city to annex property without a citizen vote under the following circumstances. First, all landowners within the area to be annexed must consent to it. The land to be annexed must also be within a city’s existing UGB and at least one lot or parcel must be either contiguous with the existing city boundary or separated from the boundary by a body of water or public right of way. The proposed annexation also must conform to all requirements of the city’s ordinances and land use plans.³ SB 1573 therefore requires annexation without a citizen vote if the proposed property is within the city’s UGB, is adjacent to the city’s existing boundary and if annexation is consistent with all local ordinances, including a city’s land use plan. SB 1573 does not compel a city to annex property that is outside of its existing UGB nor does it require a city to annex property if doing so would violate any city ordinance or land use plan.

This interpretation is consistent with the legislative history supporting SB 1573. On February 24, 2016 the Senate held a work session on SB 1573. Proponents of SB 1573 testified that they believed the bill would create a reasonable and predictable process by which a city would annex land outside its boundaries that it had identified as necessary for the city’s growth over the next 20 years. Exhibit E to Declaration of Evan

³ The City of Corvallis has established an extensive set of application requirements for annexation petitions. See *Corvallis Land Development Code*, Chapter 2.6 (Declaration of Nicole DeFever In Support Of State’s Combined Response To Plaintiff and Philomath’s Cross Motions For Summary Judgment, Exhibit Q). The city has also established review criteria that examine, among other things, the reason for the annexation, any health issues involved, the availability of public facilities to service the property, the relative advantages and disadvantages of the annexation, and the proposed annexation’s compatibility with existing uses, traffic patterns, and infrastructure. *Id.*

Christopher, pp.5-7 (testimony of David Hunnicutt).

In making its intramural authority argument, LOC focuses as its starting point on a city's decision as to whether to annex a property. However, as it relates to SB 1573, there is an earlier city decision that must be examined as well. As discussed above SB 1573 only applies to land within a city's UGB. In designating a UGB, a city is exercising extramural authority as it is identifying land outside its existing boundary that it believes it must acquire in order to meet its projected growth needs. While a city may develop its own internal decision making process for establishing or modifying its UGB, the UGB development process is subject to significant statutory criteria and procedural requirements. *See* ORS 197.295 *et seq.*; ORS 197A.300 *et seq.* In addition, the State reviews and approves a city's proposed UGB. *See* ORS 197A.325.

Taken in the context of a city's UGB designation, SB 1573 is an annexation process a city must follow for annexing land that it has identified outside of its existing boundary as being necessary for future growth. While a city may designate its own UGB development process, it is using that process to exercise extramural authority granted by the State. In addition, placing citizen vote exemptions on a city's extramural annexation authority is within the legislature's authority. *Aloha Incorporation Advisory Commission v. Portland Metro Area Local Government Boundary Commission*, 72 Or App 299, 302-03 (1985). SB 1573 is therefore a valid exercise of the legislature under *State ex rel Mullins v. Port of Astoria* and *Mid-County Future Alternatives Committee v. City of Portland*. To be sure, and as noted by the *Mid County Future Alternatives* Court, the fact that a city is exercising extramural annexation authority granted by the legislature does not answer the question as to whether the State has *carte blanche* to require it to annex land. A statute requiring a city to annex land that it has not identified as necessary for future growth, or requiring it to annex land in violation of local ordinances or land use plans, may violate a city's constitutional Home Rule authority. However, SB 1573 is not that law because it exempts annexation from a citizen vote only after a city, through its own internal decision making process, identifies its proposed expansion in the form of a UGB and then decides, through its own internal process, that the annexation of land within that UGB complies with all local laws.

The court recognizes that SB 1573 does truncate a city's decision making process for certain annexations by exempting them from a citizen vote. However, the fact that a statute impacts a city's decision making process does not mean that it is categorically prohibited by Article XI, Section 2. As noted above, the test established in *City of LaGrande v. PERB* requires that a State law impacting a city process must address a State concern and must be justified by a need to safeguard the interests of persons or entities affected by the procedures of local government. A city's exercise of its extramural authority to reserve land within its UGB has impacts on individuals and entities beyond the city's existing boundary. Placing property in a city's UGB does not provide landowners within that UGB any certainty as to when their property will be annexed to the city or what ultimate criteria will be applied to their request if the petition is subject to a citizen vote. Exhibit E to Declaration of Evan Christopher, pp.5-7 (testimony of David Hunnicutt). The State arguably has an interest in providing those landowners with some predictability regarding UGB annexation decisions. In addition, the State has an interest in developing a predictable annexation process for land within a city's UGB because those annexations may affect the land use planning decisions of surrounding municipalities on issues such as transportation and infrastructure development. *Id.* These appear to be the type of state concerns that the *City of LaGrande v. PERB* Court indicated would support a statute affecting a city's internal procedures in order "to safeguard the interests of persons or entities affected by the procedures of local government." *LaGrande v. Public Employees Retirement Board*, 281

at 142.

Even assuming, as LOC argues, that a city's decision making process for annexation is an intramural decision, SB 1573 is still a valid exercise of legislative authority under *City of LaGrande v. PERB*. Under the analysis in that case, "a general law addressed primarily to substantive social, economic, or other regulatory objectives of the state prevails over contrary policies preferred by some local governments if it is clearly intended to do so, unless the law is shown to be irreconcilable with the local community's freedom to choose its own political form." *City of LaGrande v. Public Employees Retirement Board*, 281 Or at 142. SB 1573 is a general law addressed toward the regulatory objective of implementing the State's comprehensive land use planning system in a manner consistent with statewide planning goals. *See City of Pendleton v. Kerns*, 56 Or App 818, 826-27 (1982) (statewide land use planning goals are "are general laws addressed primarily to substantive, regulatory objectives of the state"). The application of SB 1573 to city annexation decisions "[n]otwithstanding a contrary provision of the city charter or a city ordinance" demonstrates that the legislature clearly intended its annexation requirements to supersede any city's law requiring annexation by citizen vote.

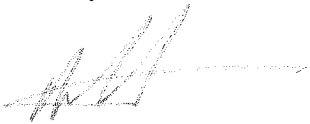
The remaining question under the *City of LaGrande v. PERB* analysis is whether SB 1573 is irreconcilable with a city's freedom to choose its own political form. While the *City of LaGrande v. PERB* Court did not define the term "irreconcilable" it did note that "[i]nstances where general regulatory laws have this effect are probably rare" but hypothesized that "state laws that would impose policy responsibilities or record-keeping, reporting, or negotiating requirements on persons or entities contrary to their allocation under the local charter" may be irreconcilable with a city's freedom to choose its own political form. *City of LaGrande v. PERB*, 281 Or at 156, fn 31. In *City of Sandy v. Metro*, 200 Or App 481 (2005) the Court of Appeals determined that Metro's statutory authority to require the City of Hillsboro to modify its UGB and re-examine its industrial zoning ordinances was not irreconcilable with the city's freedom to choose its own political form. 200 Or App at 495-96. In *Springfield Utility Board v. Emerald People's Utility District*, 339 Or 631 (2005) the Supreme Court determined that the State Public Utility Commission (PUC) had statutory authority to displace a municipal utility district. The *Springfield Utility Board* Court determined that the State law was reconcilable with the city's Home Rule authority to develop its own structure and form because the statutes authorizing the PUC action "do nothing to affect the structure or the form of the city's government and, instead, merely provide a comprehensive, statewide system for allocating service territories to different utility providers." 339 Or at 647. A city may have Article XI, Section 2 authority to both establish its initial boundary and to determine whether it wishes to change that boundary. However, once a city determines that it must expand its boundary to accommodate future growth, its decision as to how to expand that boundary is regulated in large part by state land use planning laws and it must rely on a grant of legislative authority to expand that boundary through annexation. Under the case law cited above, SB 1573 is not irreconcilable with the city's freedom to determine its own political structure or form.

In sum, SB 1573 does not violate Article XI Section 2 because it is a permissible exercise of the legislature's authority to regulate the extramural process by which a city identifies land outside of its boundaries for future growth and then acquires it. SB 1573 also satisfies the requirements of the test articulated in *City of LaGrande v. PERB* for determining the validity of a statute that conflicts with city Home Rule authority. State Defendants are therefore entitled as a matter of law to judgment against LOC's constitutional challenge to SB 1573.

Finally, Plaintiffs City of Corvallis and City of Philomath argue that SB 1573 is invalid because it does not “aid or facilitate” Oregon Constitution Article I, Section 1, Article IV, Sections 1(1), 1(2)(a), 1(5) or Article XI, Section 2.⁴ Plaintiffs City of Corvallis and City of Philomath argue that SB 1573 nullifies, abrogates or amends the authority and structure established by the electorate of the City of Corvallis. As discussed above, cities do not have constitutional authority to annex property and municipal citizens do not have a constitutional right to vote on annexation. Any impact that SB 1573 may have on a city’s charter amendment requiring a citizen vote on annexation therefore does not abrogate, amend, or nullify any constitutional Home Rule authority or any citizen’s constitutional right to vote on local initiatives or referenda. In addition, neither Plaintiff City of Corvallis nor Plaintiff-Intervenor City of Philomath identify any voting right implicated by SB1573 that affects state voters in general beyond the right to vote in municipal decisions. State Defendants are therefore entitled to judgment as a matter of law on Plaintiffs City of Corvallis’ and City of Philomath’s “aid or facilitate” claim.

For the reasons above, State Defendants are entitled to judgment as a matter of law on Plaintiffs’ constitutional challenges to SB 1573 and their request for injunctive relief. State Defendants’ Motion For Summary Judgment is granted and Plaintiffs’ Cross-Motions for Summary Judgment are denied. Ms. De Fever please, within 21 days, submit an order to the court consistent with this letter ruling.

Sincerely,



Matthew J. Donohue
Circuit Court Judge

⁴ The court resolved Plaintiff’s and Plaintiff-Intervenor City of Philomath’s Article XI, Section 2 and Article VI, Section 1 constitutional challenges against SB1573 in relation to their respective charter annexation amendments on sub-constitutional grounds. However, their “aid and facilitate” argument appears to be a broader constitutional challenge as it implicates not just city voters, but all Oregon voters as well. The court therefore addresses this constitutional argument as part of its summary judgment ruling.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BENTON

CITY OF CORVALLIS, an Oregon Municipal
Corporation,

Plaintiff,

and

LEAGUE OF OREGON CITIES,

Plaintiff-Intervenor,

and

CITY OF PHILOMATH,

Plaintiff-Intervenor

v.

STATE OF OREGON, KATE BROWN,
Governor of Oregon, JEANNE P. ATKINS,
Secretary of State, JIM RUE, Oregon
Department of Land Conservation and
Development, CALDWELL FARMS, LLC,
MICHAEL GALPIN, PATRICIA GALPIN,
GEORGE STOVALL, EDWARD
TRUEBLOOD, JAVIER IXTLAHUAC, EVA
IXTLAHUAC, LARRY DESAULNIERS,
THERESA DESAULNIERS,

Defendants.

Case No. 16CV17878

ORDER ON MOTIONS FOR STAY

ORS 20.140 - State fees deferred at filing

This matter came before the Court on the *Motion for Stay by Plaintiff* and *Motion for Stay by City of Philomath*. The Court having read the briefs and being fully advised; now, therefore;

Circuit Court Judge Matthew J. Donohue

Submitted by: J. Nicole DeFever
Senior Assistant Attorney General
Attorneys for Defendants



CIRCUIT COURT OF OREGON
FOR BENTON COUNTY

BENTON COUNTY COURTHOUSE
POST OFFICE BOX 1870
CORVALLIS, OREGON 97339

MATTHEW J. DONOHUE
CIRCUIT JUDGE

(541) 766-6843

Filed

MAY 24 2017

Benton County Circuit Court
Corvallis, Oregon
Entered

May 24, 2017

James K. Brewer (via Email only)
Attorney at Law

J. Nicole DeFever (via Email only)
Attorney at Law

David E. Coulombe (via Email only)
Attorney at Law

Phillip Thoennes (Via Email only)
Attorney at Law

Larry & Teresa Desaulniers
830 NE Lawndale Place
Corvallis, OR 97330

Caldwell Farms, LLC
c/o Lynn Nordhausen, Reg Agent
2773 Titleist Circle
Corvallis, OR 97333

Eva & Javier Ixtlahuac
810 NE Lawndale Place
Corvallis, OR 97330

Michael & Patricia Galpin
7906 NE 131st Street
Kirkland, WA 98034

Edward Trueblood
815 NE Lawndale Place
Corvallis, OR 97330

George Stovall
825 NE Lawndale Place
Corvallis, OR 97330

Re: City of Corvallis v. State of Oregon, Kate Brown, Governor; Jeanne P. Adkins, Secretary of State;
Jim Rue, Oregon DLCD; Caldwell Farms, LLC; Larry & Teresa Desaulniers; Michael & Patricia Galpin;
Eva & Javier Ixtlahuac; George Stovall; and Edward Trueblood - Benton County Case No. 16CV17878

Dear Counsel and Parties:

This matter comes before the court on Plaintiff City of Corvallis' and Plaintiff-Intervenor City of Philomath's (hereinafter referred to collectively as "Plaintiffs") motions to stay the General Judgment of the court during the pendency of appeal. State Defendants object to this request.

ORS 19.350(3) establishes the criteria a court should consider when deciding whether to grant a stay. Under ORS 19.350(3),

Verified Correct Copy of Original 5/24/2017.

“The trial court shall consider the following factors in deciding whether to grant a stay under this section, in addition to such other factors as the trial court considers important:

- (a) The likelihood of the appellant prevailing on appeal.
- (b) Whether the appeal is taken in good faith and not for the purpose of delay.
- (c) Whether there is any support in fact or in law for the appeal.
- (d) The nature of the harm to the appellant, to other parties, to other persons and to the public that will likely result from the grant or denial of a stay.”

In this case, the court granted State Defendant’s Motion for Summary Judgment because neither of Plaintiff’s charters conflict with SB 1573 given that both require a citizen vote of annexation “[u]nless mandated by State law.” While Plaintiffs’ disagree with this determination, case law clearly demonstrates that such text in a city’s charter allows for a city to annex land without a citizen vote if required by State law. *See Pieper v. Health Division*, 288 Or 551 (1980); *Mid-County Future Alternatives Committee v. City of Portland*, 310 Or 152 (1990); *Hunter v. Metropolitan Area Local Boundary Commission*, 160 Or App 508 (1999). Plaintiffs’ appeals on this issue therefore do not appear to be supported by existing case law and they are therefore not likely to prevail on the issue on appeal.

As to the nature of the harm of not granting the appeal, the court acknowledges that denying the stay may result in property being annexed to the city without a citizen vote. However, if Plaintiffs prevail on appeal, they have a statutory mechanism under ORS 222.460 to withdraw any annexed territory from the city. In contrast, landowners within Plaintiffs’ respective UGBs whose land is currently outside city limits would have no recourse to address the harm to them if a stay is granted and State Defendants prevail on appeal.

Taking the factors identified in ORS 19.350(3) together, the court finds that granting Plaintiffs’ stay request is not appropriate given existing case law and given the respective potential harms to all parties and persons at issue during the pendency of appeal.¹ Plaintiffs’ motions to stay the General Judgment pending the outcome of their appeals are therefore denied. Ms. DeFever, please, within 14 days, submit an order to the court consistent with this letter.

Sincerely,



Matthew J. Donohue
Circuit Court Judge

¹ The court does not find that Plaintiffs are taking their appeal in bad faith or for the purpose of delay.

CERTIFICATE OF READINESS

This proposed *Order* is ready for judicial signature because:

1. ☐ Each opposing party affected by this *Order* has stipulated to the *Order*, as shown by each opposing party's signature on the document being submitted.

2. ☐ Each opposing party affected by this *Order* has approved the *Order*, as shown by signature on the document being submitted or by written confirmation of approval sent to me.

3. ☒ I have served a copy of this *Order* on all parties entitled to service and provided written notice of the objection period, and:

a. ☒ No objection has been served on me within that time frame.

b. ☐ I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.

c. ☐ After conferring about objections, [*role and name of opposing party*] agreed to file any remaining objection with the court by [*date*], which predated my submission.

4. ☐ The relief sought is against an opposing party who has been found in default.

5. ☐ An order of default is being requested with this proposed judgment.

6. ☐ Service is not required by statute, rule, or otherwise.

DATED June 27, 2017.

]

s/ J. Nicole DeFever
J. NICOLE DEFEVER #030929
Senior Assistant Attorney General
Trial Attorney
Nicole.DeFever@doj.state.or.us
Of Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on June 27, 2017, I served the foregoing ORDER ON MOTIONS FOR STAY upon the parties hereto by the method indicated below, and addressed to the following:

James K Brewer
Eickelberg & Fewel
456 SW Monroe Ste. 101
Corvallis, OR 97330
Of Attorneys for Plaintiff

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ SERVED BY E-FILING

Philip M. Thoennes
League of Oregon Cities
1201 Court Street NE, Ste 200
Salem, OR 97301
Of Attorneys for Plaintiff-Intervenor

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ SERVED BY E-FILING

David E. Coulombe
Fewel, Brewer & Coulombe
456 SW Monroe #101
Corvallis, OR 97330
Of Attorneys for Plaintiff-Intervenor

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ SERVED BY E-FILING

Larry Desaulniers
830 NE Lawndale Place
Corvallis, OR 97330
Defendant

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ SERVED BY E-FILING

Theresa Desaulniers
830 NE Lawndale Place
Corvallis, OR 97330
Defendant

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ SERVED BY E-FILING

Michael Galpin
7906 NE 131st Street
Kirkland, WA 98034
Defendant

☐ HAND DELIVERY
☒ MAIL DELIVERY
☐ OVERNIGHT MAIL
☐ SERVED BY E-FILING

1 Patricia Galpin
2 7906 NE 131st Street
3 Kirkland, WA 98034
4 *Defendant*

___ HAND DELIVERY
X MAIL DELIVERY
___ OVERNIGHT MAIL
___ SERVED BY E-FILING

4 Eva Ixtlahuac
5 810 NE Lawndale Place
6 Corvallis, OR 97330
7 *Defendant*

___ HAND DELIVERY
X MAIL DELIVERY
___ OVERNIGHT MAIL
___ E-SERVE

7 Javier Ixtlahuac
8 810 NE Lawndale Place
9 Corvallis, OR 97330
10 *Defendant*

___ HAND DELIVERY
X MAIL DELIVERY
___ OVERNIGHT MAIL
___ SERVED BY E-FILING

10 George Stovall
11 825 NE Lawndale Place
12 Corvallis, OR 97330
13 *Defendant*

___ HAND DELIVERY
X MAIL DELIVERY
___ OVERNIGHT MAIL
___ SERVED BY E-FILING

12 Edward Trueblood
13 815 NE Lawndale Place
14 Corvallis, OR 97330
15 *Defendant*

___ HAND DELIVERY
X MAIL DELIVERY
___ OVERNIGHT MAIL
___ SERVED BY E-FILING

15 Peter L Barnhisel
16 Barnhisel Willis Barlow et al
17 123 NW 7th St
18 PO Box 396
19 Corvallis, OR 97339

___ HAND DELIVERY
X MAIL DELIVERY
___ OVERNIGHT MAIL
___ SERVED BY E-FILING

20 *Of Attorneys for Defendants Caldwell*
21 *Farms, LLC*

21 *s/ J. Nicole DeFever*
22 J. NICOLE DEFEVER #030929
23 Senior Assistant Attorney General
24 Trial Attorney
25 Tel (971) 673-1880
26 Fax (971) 673-5000
Nicole.DeFever@doj.state.or.us
Of Attorneys for Defendants State of Oregon,
Kate Brown, Jeanne Atkins, Jim Rue



**CORVALLIS
CITY COUNCIL WORK SESSION**

**MARCH 22, 2016
3:30 pm – 5:30 pm**

**Madison Avenue Meeting Room
500 SW Madison Avenue**

I. Call to Order

II. Imagine Corvallis 2040 Focus Areas Review (Attachment)



III. Annexation Legislation Discussion (Attachment)

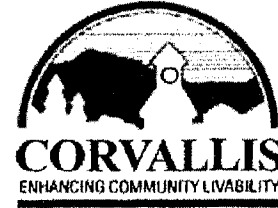
IV. Community Comments (*Accepted on agenda items for this work session only. Members of the community wishing to offer advance written comments are encouraged to use the public input form at www.corvallisoregon.gov/publicinput.*)

V. Adjournment

If you need special assistance to participate in this meeting, please contact the City Recorder at (541) 766-6901 (for TTY services, dial 7-1-1). Notification at least two business days prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting. (In compliance with the Americans with Disabilities Act, 28 CFR 35.102-35.104 ADA Title I and ORS 192.630(5)).

A Community That Honors Diversity

TO: City Council for March 22, 2016
FROM: Jim Brewer, City Attorney 
DATE: March 15, 2016
THROUGH: Mark W. Shepard, P.E., City Manager 
SUBJECT: SB 1573 Background



Action Requested:

This memorandum provides background information and identifies some considerations to prepare the Council to make the policy decisions required by SB 1573. No action is required at this time.

Discussion:

SB 1573 requires the legislative bodies of cities to annex territory adjacent to the City limits without submitting the annexation proposal to the electors of the city, notwithstanding local charter provisions or ordinances requiring a vote.

On March 9, 2016, the Speaker of the House signed SB 1573. While this memorandum was being prepared, the Governor signed the bill into law. SB 1573 includes an emergency clause making the statute effective immediately and preventing referendum on the statute. The City Attorney's office has received inquiries from property owners about the process to annex properties that fall under the terms of SB 1573. The City Council's policy decisions should address how the City will proceed with annexation proposals that fall under SB 1573.

Assuming that SB 1573 is a valid law, as long as all the owners of a territory proposed for annexation agree, and the territory abuts the City limits within the urban growth boundary, the decision to annex the property would be made by the City Council, and not submitted to the voters. The City Council could do this through enacting an ordinance. The City Council would need to initiate text amendments to the Comprehensive Plan and Land Development Code, so that the City's annexation procedures follow the new statutory process.

Good policy arguments both support and oppose voter approved annexation. In our opinion, regardless of the policy decision the City Council makes regarding following SB 1573, eventually annexation decisions in Corvallis are likely to lead to litigation on this issue. Whether the Council follows the requirements of SB 1573 and does not submit the proposal to the voters, or whether the Council follows the requirements of the Charter and submits the proposal to the voters, the decision is likely to be challenged.

In deciding how to proceed with annexations under SB 1573, the Council should consider competing policy perspectives: The legislature packaged SB 1573 with other bills intended to address affordable housing concerns. The Governor explained her rationale for signing the bill in a letter to Mayor Traber. The Housing Development Task Force has also shared with the Council some perspective on removing the voter approval requirement. The voters made a

different policy decision by enacting Section 53 of the Corvallis City Charter. The Council will need to address this conflict, either before or as part of an annexation proposal. One proposal is currently in staff review, and the process for approval would not fall under the “goal post” rule.

In addition to practical process questions, SB 1573 raises a number of legal issues about how local enactments relate to legislative actions and Oregon constitutional provisions. The following points are a general summary of some of the fairly complicated legal issues the legislation raises regarding the voter approved charter language in Corvallis. The summary statements, considerations and opposing views that follow are intended to give the Council a quick exposure to some of the issues, but should not be seen as weighing the merits or recommending any particular policy decision.

- 1) Section 53 of the Corvallis City Charter includes language requiring a vote on annexations “unless mandated by state law.” Corvallis Land Development Code Chapter 2.6 sets out procedures on annexation to implement Section 53 of the City Charter. Section 53 was the result of a citizen’s initiative, and the Corvallis City Charter was adopted by the voters. Voter approval of annexation is described by the Oregon Supreme Court as a legislative action subject to referendum. *Heritage Enterprises v. City of Corvallis*, 300 Or. 168, 708 P.2d 601 (1985).

Consideration:

SB 1573 doesn’t mandate approval of an annexation, but can be viewed as mandating a process for annexations. Arguably, this does not conflict with Section 53 of the Charter.

Opposing view: Section 53 of the Charter requires a vote unless the annexation itself is mandated by state law, not the process for annexation. In the case of declared health hazards, the annexation was mandated, not the process. In this view, SB 1573 conflicts with Section 53.

- 2) The Oregon Constitution reserves the right of local voters to amend local charters, as part of the home rule authority. The Oregon Constitutional grant of authority to the legislature is subject to the power of initiative and referendum. Similarly, the right of initiative and referendum for municipal legislation is reserved for the voters of the municipality. Attachment B.

Consideration:

If SB 1573 is an unconstitutional infringement on home rule or the reservation of the power of initiative and referendum, then SB 1573 is void as a matter of law. Determining the corporate boundaries and what territory to include in a municipal corporation is fundamental to local governance.

Opposing view: SB 1573 preempts local governments from using the voter approval process in certain situations. It cannot be unconstitutional because it does not concern

local governance issues, as housing development and land use planning is a statewide concern.

- 3) SB 1573 allows the governing body of a city to approve an annexation through a city ordinance.

Consideration:

If a council approves annexations by Ordinance, SB 1573 doesn't expressly prevent voters seeking a referendum on the Ordinance, so the right to initiative and referendum on legislative matters is preserved.

Opposing view: A referendum frustrates the legislative purpose and is implicitly prohibited by SB 1573.

- 4) The Oregon Supreme Court has interpreted the home rule provisions of the Constitution to require the legislature to either include an express and unambiguous statement of the legislative intent to preempt local legislation in an area or a complete occupation of the field.

Consideration:

State law, including SB 1573, preempts and occupies the field for annexation processes.

Opposing view: SB 1573 does not contain an express preemption nor can it occupy the field, as its plain language only applies to a limited set of territories and annexations.

Staff and the City Attorney are available to answer any questions you might have.

Attachments:

Text of SB 1573 (Attachment A)
Oregon Constitution Provisions (Attachment B)
Corvallis City Charter Provisions (Attachment C)
Comprehensive Plan Provisions (Attachment D)
Corvallis Land Development Code Provisions (Attachment E)
Map of City Limits and Urban Growth Boundary (Attachment F)
Governor Brown letter to Mayor Traber 3/15/16 (Attachment G)

SB 1573

Attachment A

78th OREGON LEGISLATIVE ASSEMBLY--2016 Regular Session

Enrolled
Senate Bill 1573

Sponsored by Senator BEYER (Presession filed.)

CHAPTER

AN ACT

Relating to boundary changes; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS 222.111 to 222.180.

SECTION 2. (1) This section applies to a city whose laws require a petition proposing annexation of territory to be submitted to the electors of the city.

(2) Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city shall annex the territory without submitting the proposal to the electors of the city if:

(a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015;

(b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;

(c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and

(d) The proposal conforms to all other requirements of the city's ordinances.

(3) The territory to be annexed under this section includes any additional territory described in ORS 222.111 (1) that must be annexed in order to locate infrastructure and right of way access for services necessary for development of the territory described in subsection (2) of this section at a density equal to the average residential density within the annexing city.

(4) When the legislative body of the city determines that the criteria described in subsection (2) of this section apply to territory proposed for annexation, the legislative body may declare that the territory described in subsections (2) and (3) of this section is annexed to the city by an ordinance that contains a description of the territory annexed.

SECTION 3. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Passed by Senate March 1, 2016

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House March 3, 2016

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2016

Approved:

.....M.,....., 2016

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2016

.....
Jeanne P. Atkins, Secretary of State

SB1573

Attachment B

OREGON CONSTITUTION Article XI, § 2**§ 2. Formation of corporations; municipal powers regarding charter and regulation of intoxicating liquor**

Corporations may be formed under general laws, but shall not be created by the Legislative Assembly by special laws. The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town. The legal voters of every city and town are hereby granted power to enact and amend their municipal charter, subject to the Constitution and criminal laws of the State of Oregon, and the exclusive power to license, regulate, control, or to suppress or prohibit, the sale of intoxicating liquors therein is vested in such municipality; but such municipality shall within its limits be subject to the provisions of the local option law of the State of Oregon.

OREGON CONSTITUTION Article IV, § 1**§ 1. Legislative, initiative, and referendum powers**

(1) The legislative power of the state, except for the initiative and referendum powers reserved to the people, is vested in a Legislative Assembly, consisting of a Senate and a House of Representatives.

(5) The initiative and referendum powers reserved to the people by subsections (2) and (3) of this section are further reserved to the qualified voters of each municipality and district as to all local, special and municipal legislation of every character in or for their municipality or district. The manner of exercising those powers shall be provided by general laws, but cities may provide the manner of exercising those powers as to their municipal legislation. In a city, not more than 15 percent of the qualified voters may be required to propose legislation by the initiative, and not more than 10 percent of the qualified voters may be required to order a referendum on legislation.

SB 1573

Attachment C

CITY OF CORVALLIS CHARTER 2006

CHAPTER 2**Powers**

Section 3. Powers of the City. The City shall have all the rights, powers, privileges, and immunities which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, including those rights, powers, privileges, and immunities which a City can exercise upon specifically accepting them or upon being granted the power to exercise them by the people of the City or the legislature of the State, as fully as though this Charter expressly stated each of those rights, powers, privileges, and immunities and as though each of them had been specifically accepted by the City or granted to it by the people of the City or by the legislature of the State. The powers contained herein from previously enacted Charters shall be deemed a part of the powers of the City. The City is further empowered to assess, levy, and collect taxes of all types for any and all lawful municipal purposes.

Section 4. Responsibility to All People. The City shall exercise its power to ensure the equal protection, treatment, and representation of all persons without discrimination including, but not limited to, age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income. Corvallis is a community that honors diversity and diverse interests, and aspires to be free of prejudice, bigotry, and hate.

Section 5. Construction of the Charter. In this Charter no mention of a particular power, right, privilege, or immunity shall be construed to be exclusive or to restrict the scope of the powers, rights, privileges, or immunities which the City would have if the particular power was not mentioned. The Charter shall be liberally construed to the end that the City may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to the laws and to the municipal home-rule provisions of the constitution of the State of Oregon.

CHAPTER 10**Miscellaneous**

Section 53. Vote on Annexations. Unless mandated by State law, annexation, delayed or otherwise, to the City of Corvallis may only be approved by a prior majority vote among the electorate.

SB 1753

Attachment D

CITY OF CORVALLIS COMPREHENSIVE PLAN

Article 14. Urbanization / Annexation

Findings:

- 14.1.b** *Existing elements of a growth management system for Corvallis include: annexation charter amendment; services outside City Limits charter amendment; Comprehensive Plan; Land Development Code; Master Facility Plans; Capital Improvement Program; Corvallis Urban Fringe Management Agreement; Benton County zoning for the Urban Fringe; Land Development Information Report; Buildable Land Inventory and Land Need Analysis for Corvallis; and systems development charge ordinance.*

- 14.3.b** *The citizens of Corvallis have adopted mechanisms to control the extension of City services outside the corporate City Limits as well as mechanisms for voter approval of annexations. Specific elements of the City Charter state:*

- i. The City shall furnish no services (or enter into any agreement or contract to furnish such services) to property outside the corporate limits of the City unless the City Council shall have first adopted an ordinance approving the same.*
- ii. Unless mandated by State law, annexation (delayed or otherwise) to the City of Corvallis may only be approved by a prior majority vote among the electorate.*

- 14.3.1** *Annexations can only be recommended to the voters where the following findings are made:*

- A. There is a demonstrated public need for the annexation.*
- B. The advantages to the community resulting from the annexation shall outweigh the disadvantages.*
- C. The City and other jurisdictions are capable of providing urban services and facilities required by the annexed area, when developed.*

SB1573

Attachment E

City of Corvallis Land Development Code

CHAPTER 2.6 ANNEXATIONS

Section 2.6.10 - BACKGROUND

The process of land Annexation allows for the orderly expansion of the City and adequate provision for public facilities and services. The City Charter requires voter approval of an Annexation unless an Annexation is mandated by state law. For example, Health Hazard Annexations are mandated by state law and do not require voter approval.

Section 2.6.20 - PURPOSES

The procedures and review criteria for proposed Annexations are established for the following purposes:

- a. Maximize citizen involvement in the Annexation review process;
- b. Establish a methodology to evaluate need, serviceability, and the economic, environmental, and related social effects of proposed Annexations;
- c. Provide adequate public information and sufficient time for public review before an Annexation election;
- d. Ensure adequate time for City staff review; and
- e. Allow for simultaneous review of multiple Annexation proposals.

2.6.30.11 - Effective Date of Zoning Designation

Unless an appeal has been filed, the decision of the Planning Commission regarding establishment of the zoning designation shall become effective 12 days after the Notice of Disposition is signed.

If the Annexation is not forwarded to the voters by the City Council, or the electorate does not approve the Annexation, then the newly established zoning designation shall become null and void.

2.6.30.12 - Action by the City Council

Upon receipt of the Planning Commission's recommendation the proposed Annexation shall be set for a public hearing before the City Council in accordance with Chapter 2.0 - Public Hearings. The Council shall review all proposals in time to comply with county or state deadlines for submitting measures to the voters in May or November. The Council shall set an Annexation for an election only when it finds that the Annexation is consistent with the review criteria in Sections 2.6.30.06 and 2.6.30.07.

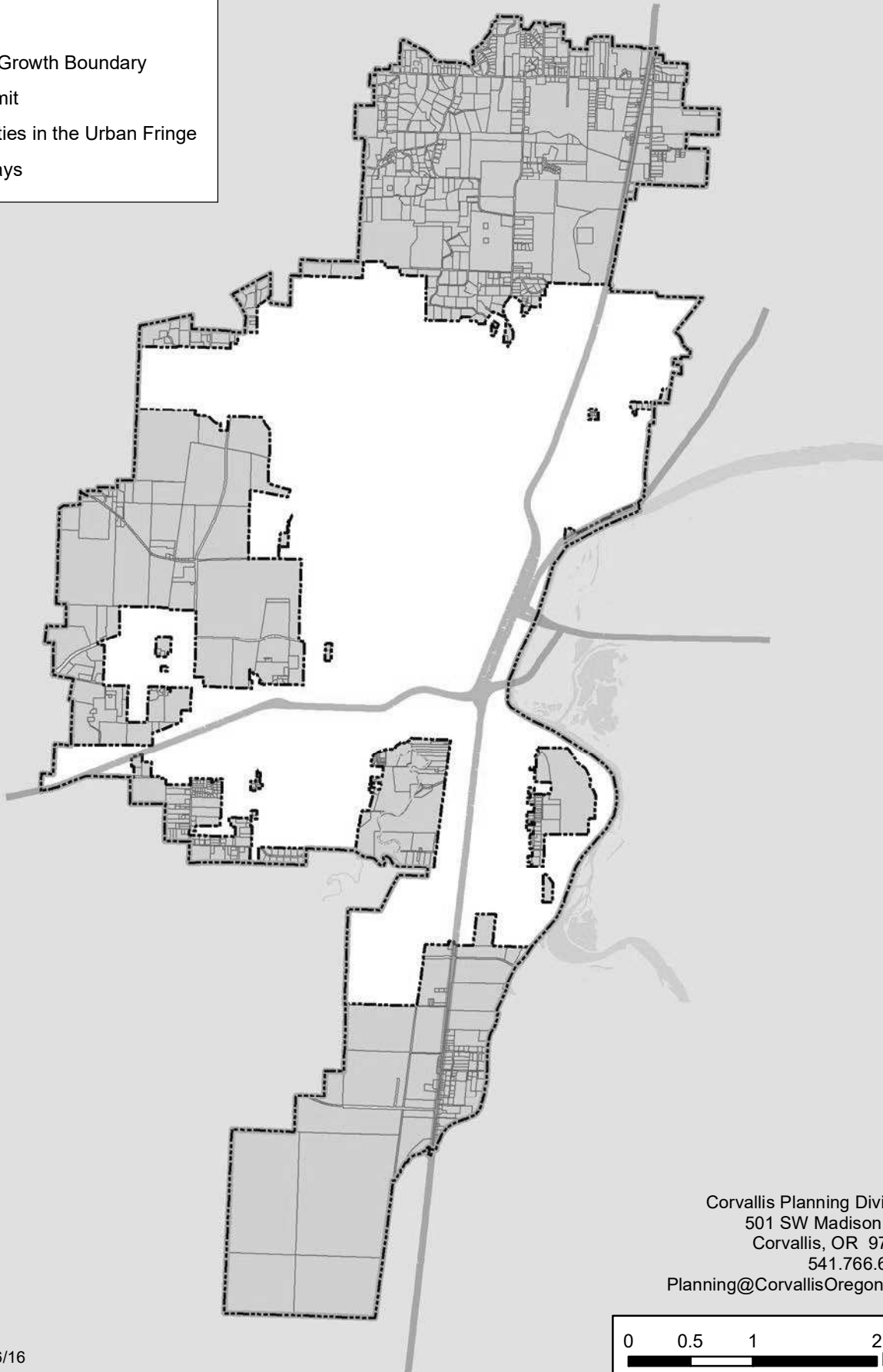
Note: The City Council's decision to submit an Annexation to the electorate is the last discretionary decision in the process. Certifying the election after votes are counted is not a discretionary decision.

Properties in the Corvallis Urban Fringe

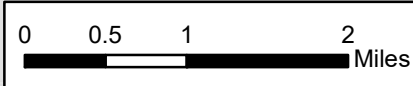
Attachment CC-A, Page 38 of 55

Legend

- Urban Growth Boundary
- City Limit
- Properties in the Urban Fringe
- Highways



Corvallis Planning Division
501 SW Madison Ave
Corvallis, OR 97333
541.766.6908
Planning@CorvallisOregon.gov





KATE BROWN
Governor

March 15, 2016

Biff Traber, Mayor
City of Corvallis
PO Box 1083
Corvallis, OR 97339-1083

Dear Mayor Traber:

Thank you for taking the time to write to me and provide feedback on SB 1573, legislation related to annexation of land within urban growth boundaries or the Metro boundary.

As you know, throughout Oregon, hardworking families are struggling to find and maintain the stabilizing anchor that housing provides because rents are increasing faster than wages, vacancy rates are at historic lows and more and more people are experiencing homelessness. We know how to address this issue: we need to increase our supply of safe, affordable and decent homes for Oregonians. Together with the legislature I championed a \$40 million investment in a new housing program: Local Innovation and Fast Track Housing (LIFT). This investment will provide much needed funding to increase our housing supply in Oregon with an emphasis on rural communities, people of color and families in services at DHS.

During the 2016 legislative session, advocates and legislators worked together to pass a package of legislation aimed at addressing the housing needs in Oregon. Local governments need more tools to address the development need for workforce housing. Our economy cannot thrive if the workforce doesn't have a place to live. SB 1533 lifts the preemption on inclusionary zoning and creates a new revenue source for housing through the construction excise tax. Landlords, tenants and advocates came to the negotiation table to discuss productive ways to protect seniors and families in this housing market and passed HB 4143 which gives tenants additional notice when their rent is increased and protects tenants on month to month leases from rent increases in their first year of tenancy.

Throughout the negotiation on these bills, industry partners urged policy makers to address land use issues which might assist in addressing affordable housing. SB 1573 was one of the bills identified and was passed along with HB 4079 in the larger housing package.

March 15, 2016

Page Two

As you know, in the past we have seen a number of situations where a city and county have approved the urbanization of an area, only to see a subsequent action that prevents the area from being added to the city. Existing state policy provides that urban areas generally should be within a city. One reason for this policy is to encourage development to occur in ways that makes housing more affordable. This bill is consistent with that existing policy, and is targeted in terms of its applicability. Given the thoughtful approach to limiting the application of the bill and the larger goals of increasing opportunities for affordable housing, I will sign this bill, as part of the 2016 housing package.

Thank you for your thoughtful letter and feedback. I am confident we can continue to work together to address the land use and housing needs in Oregon in complementary strategies.

A handwritten signature in black ink that reads "Kate Brown". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Sincerely,
Governor Kate Brown

GKB:ks



LWV Corvallis

PO Box 1679, Corvallis, OR 97339-1679

541-753-6036 • <http://www.lwv.corvallis.or.us>

To: Mayor, City Council and City Attorney Brewer

From: League of Women Voters of Corvallis, Laura Lahm Evenson, President

Date: March 22, 2016

Subject: SB1573 Background and Comments

The League of Women Voters of Corvallis has questions about the memo to the Council from Mr. Brewer dated March 15, 2016, included below, and comments about the whole annexation issue before us now. We are submitting letters opposing any negation of our Charter Amendment 53. These letters exemplify how well Corvallis has fared with the annexation Charter Amendment. They include former Mayor Helen Berg, former State Senator Cliff Trow, former LWVOR president Paula Krane and current LWVOR president Norman Turrill.

The League both locally and statewide has long supported the right of citizens to vote on annexations. Our Corvallis Urbanization Position, from which we can lobby, states: Support for citizens' right to determine by ballot the expansion of municipal limits resulting from proposed annexations, delayed or otherwise, excepting only state-mandated annexations.

Will the City Council defend our Home Rule authorization and our right to vote on annexations? These rights are inviolable.

This new legislation was designed to increase the availability of affordable housing. However, SB 1573 has no direct nexus with affordable housing issues. SB 1573 does NOT say that the annexed land must consist of or include affordable housing.

As you know, affordable housing is a very complex issue. Even its definition is in question. Many types of subsidies are needed to achieve affordability. Even the new lifting of the ban on inclusionary zoning does not address truly "affordable" housing. We do look forward to the Land Conservation and Development rulemaking under HB 4079 where Goal 10, Housing, may have more clarity on this issue.

Adopting a Construction Excise Tax seems a beginning approach to finding money for truly affordable housing. Corvallis wants affordable housing for all types—families, singles, seniors and students with a range of income levels. We hope the bonds that will be made available next spring under the LIFT program will help affordable housing issues and that Corvallis can find projects that would qualify under that program.

We expect to submit testimony on this subject as it evolves. Thank you for the opportunity to comment on these vital issues before you.

TO: City Council for March 22, 2016
FROM: Jim Brewer, City Attorney
DATE: March 15, 2016
THROUGH: Mark W. Shepard, P.E., City Manager
SUBJECT: SB 1573 Background

Action Requested:

This memorandum provides background information and identifies some considerations to prepare the Council to make the policy decisions required by SB 1573. No action is required at this time.

Discussion:

SB 1573 *requires* the legislative bodies of cities to annex territory adjacent to the City limits without submitting the annexation proposal to the electors of the city, notwithstanding local charter provisions or ordinances requiring a vote.

- *We believe that the word "requires" is incorrect. It does NOT require—annexation requests can still be denied under the City's policies. It does say that, under certain circumstances (i.e. request from all property owners) that they don't have to send it out for a vote.*

On March 9, 2016, the Speaker of the House signed SB 1573. While this memorandum was being prepared, the Governor signed the bill into law. SB 1573 includes an emergency clause making the statute effective immediately and preventing referendum on the statute.

- *We think this should not have been treated as an emergency, with the annexation section included.*

The City Attorney's office has received inquiries from property owners about the process to annex properties that fall under the terms of SB 1573. The City Council's policy decisions should address how the City will proceed with annexation proposals that fall under SB 1573.

Assuming that SB 1573 is a valid law, as long as all the owners of a territory proposed for annexation agree, and the territory abuts the City limits within the urban growth boundary, the decision to annex the property would be made by the City Council, and not submitted to the voters. The City Council could do this through enacting an ordinance. The City Council would need to initiate text amendments to the Comprehensive Plan and Land Development Code, so that the City's annexation procedures follow the new statutory process.

- *It is important that this new process only narrowly follow the law. It's critical that Corvallis keep its many processes and criteria for making annexation decisions. All annexations, other than health hazards, have had willing owners, so this is not new.*

- *What happens if the new process is taken to court?*

- *Will the city declare an annexation moratorium while they initiate and approve new text amendments?*

- *Will the city keep the Charter Amendment in place? (This should be the case, since this applies to all annexations that are not just by property owner.)*

Good policy arguments both support and oppose voter approved annexation. In our opinion, regardless of the policy decision the City Council makes regarding following SB 1573, eventually annexation decisions in Corvallis are likely to lead to litigation on this issue. Whether the Council follows the requirements of SB 1573 and does not submit the proposal to the voters, or whether the Council follows the requirements of the Charter and submits the proposal to the voters, the decision is likely to be challenged.

In deciding how to proceed with annexations under SB 1573, the Council should consider competing policy perspectives: The legislature packaged SB 1573 with other bills intended to address affordable housing concerns. *•This is irrelevant to the enactment of SB1573. Each bill stands on its own with its own set of laws.* The Governor explained her rationale for signing the bill in a letter to Mayor Traber. The Housing Development Task Force has also shared with the Council some perspective on removing the voter approval requirement. The voters made a different policy decision by enacting Section 53 of the Corvallis City Charter. The Council will need to address this conflict, either before or as part of an annexation proposal. One proposal is currently in staff review, and the process for approval would not fall under the "goal post" rule.

•Does this "goal post" mean that an annexation proposal came to the city before the Governor signed the bill so it does not apply to the proposal under review? The voters approved Section 53 in 1976, long before the Governor signed SB 1573.

In addition to practical process questions, SB 1573 raises a number of legal issues about how local enactments relate to legislative actions and Oregon constitutional provisions. The following points are a general summary of some of the fairly complicated legal issues the legislation raises regarding the voter approved charter language in Corvallis. The summary statements, considerations and opposing views that follow are intended to give the Council a quick exposure to some of the issues, but should not be seen as weighing the merits or recommending any particular policy decision.

- 1) Section 53 of the Corvallis City Charter includes language requiring a vote on annexations "unless mandated by state law." Corvallis Land Development Code Chapter 2.6 sets out procedures on annexation to implement Section 53 of the City Charter. Section 53 was the result of a citizen's initiative, and the Corvallis City Charter was adopted by the voters. Voter approval of annexation is described by the Oregon Supreme Court as a legislative action subject to referendum. *Heritage Enterprises v. City of Corvallis*, 300 Or. 168, 708 P.2d 601 (1985).

Consideration:

SB 1573 doesn't mandate approval of an annexation, but can be viewed as mandating a process for annexations. Arguably, this does not conflict with Section 53 of the Charter. Opposing view: Section 53 of the Charter requires a vote unless the annexation itself is mandated by state law, not the process for annexation. In the case of declared health hazards, the annexation was mandated, not the process. In this view, SB 1573 conflicts with Section 53.

- 2) The Oregon Constitution reserves the right of local voters to amend local charters, as part of the home rule authority. The Oregon Constitutional grant of authority to the legislature is subject to the power of initiative and referendum. Similarly, the right of initiative and referendum for municipal legislation is reserved for the voters of the municipality. Attachment B.

Consideration:

If SB 1573 is an unconstitutional infringement on home rule or the reservation of the power of initiative and referendum, then SB 1573 is void as a matter of law. Determining the corporate boundaries and what territory to include in a municipal corporation is fundamental to local governance.

Opposing view: SB 1573 preempts local governments from using the voter approval process in certain situations. It cannot be unconstitutional because it does not concern local governance issues, as housing development and land use planning is a statewide concern.

- 3) SB 1573 allows the governing body of a city to approve an annexation through a city ordinance.

Consideration:

If a council approves annexations by Ordinance, SB 1573 doesn't expressly prevent voters seeking a referendum on the Ordinance, so the right to initiative and referendum on legislative matters is preserved.

• *Does this mean that in order to vote on annexations, citizens would have to use the initiative process, or could the city also put the annexation up for vote since our Charter Amendment will still exist?*

Opposing view: A referendum frustrates the legislative purpose and is implicitly prohibited by SB 1573.

- 4) The Oregon Supreme Court has interpreted the home rule provisions of the Constitution to require the legislature to either include an express and unambiguous statement of the legislative intent to preempt local legislation in an area or a complete occupation of the field.

• *It seems as if neither is the case here. The bill will be challenged under several considerations.*

Consideration:

State law, including SB 1573, preempts and occupies the field for annexation processes.

Opposing view: SB 1573 does not contain an express preemption nor can it occupy the field, as its plain language only applies to a limited set of territories and annexations.

• *How are the territories and annexations limited? We can think of no annexation request in the past that would not have had the agreement of the owners of the property.*

Staff and the City Attorney are available to answer any questions you might have.

• *What are the attorneys for the other cities affected by SB1573 saying?*

Attachments:

- Text of SB 1573 (Attachment A)
- Oregon Constitution Provisions (Attachment B)
- Corvallis City Charter Provisions (Attachment C)
- Comprehensive Plan Provisions (Attachment D)
- Corvallis Land Development Code Provisions (Attachment E)
- Map of City Limits and Urban Growth Boundary (Attachment F)
- Governor Brown letter to Mayor Traber 3115/16 (Attachment G)



LEAGUE OF WOMEN VOTERS
OF OREGON

TO: Senate Water & Land Use Committee
Senator Veral Tarno, Chair

April 8, 1997

RE: Testimony on SB 1137

The League of Women Voters opposes SB 1137 which would prohibit any city from voting on annexations. The right of citizens to vote on annexations is supported by our position that "assures opportunities for citizen participation in government decision making".

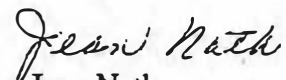
The argument that annexation votes serve only as an obstruction to development is refuted by statistics drawn from the Corvallis experience. Since 1976, 36 annexations totalling 2684.31 acres have been passed by voters. Five parcels totaling 753.37 acres have failed to be approved. Thirteen annexations totalling 1831.98 acres, initially rejected by voters, were resubmitted and approved by voters either because of changes requested by residents or better information being available for voters. There have been five health hazard annexations totaling 379.29 acres that have been mandated by the State and not voted upon. Four requests for annexations were denied by the City Council; one was passed after resubmittal and four requests were withdrawn by the applicants.

A public vote on annexations, a political choice, cannot occur without the proposed annexation having successfully completed the land use planning process. The public vote would be in addition to, not in substitution for, the land use planning process.

We support the right of citizens in any city to choose whether or not to vote on annexations.

Thank you.


Mary Krayn
President


Jean Nath
LWVOR Land Use Chair



LEAGUE OF WOMEN VOTERS OF OREGON

TO: Senate Rules and Elections Committee
Sen. Randy Miller, Chair

DATE: April 8, 1997

RE: TESTIMONY ON SB 638

The League of Women Voters of Oregon appreciates this opportunity to comment on SB 638 which repeals specific provisions of Ballot measure #9 (1994). Members of the League support the principles of campaign finance reform which provide better access to the political process for citizens and encourage citizen participation. The League is a non-partisan, non-profit political organization whose purpose is to educate citizens about government and to promote citizen involvement with government.

We speak in opposition to SB 638. The measure eliminates the voluntary spending limits enacted by Oregon voters in 1994 as part of Ballot measure #9. In its recent ruling, the Oregon Supreme Court left intact the sections relating to voluntary spending limits and the tax credit allowed for support of candidates who agreed to such limits. This provision significantly reduced the expenditures of candidates in the 1996 elections. Data indicates that legislative races were particularly impacted, and one of the goals of campaign finance reform has been to create a more equitable climate for political participation. The reward for taxpayers was the credit for supporting candidates who support campaign finance reform. Simply adding more reporting requirements, while commendable, does not amount to serious campaign finance reform.

Oregonians spoke clearly about their concerns regarding the excesses of campaign spending when they passed #9 by 72 percent. Since mandatory contribution limits apparently are not viable, voluntary expenditure limits at least give support to campaign finance reform which a majority of citizens favor. SB 638 should not be moved forward.

Mary Krahn
President

Kappy Eaton
Government Chair

The League of Women Voters of Oregon say

**NO to SB 500B
with the "annexation" amendment**

SB 500B, a "Christmas Tree" bill, includes a spoiler amendment for cities which under their Home Rule Charters have the right to vote on annexation measures.

- This amendment [SECTION 2. Subsection (11)] would subject an annexation vote by the citizens of these cities to review by the Land Conservation and Development Commission (LCDC).
- This amendment would change a political decision by the voters (i.e. an annexation vote) to a land use decision, subject to the authority of the Land Conservation and Development Commission (LCDC).
- This amendment could be used by either displeased developers or citizen groups to further complicate or delay the annexation process by appealing (either denials or approvals) to the Land Conservation and Development Commission.
- This amendment would acutely politicize Oregon's land use planning process.
- This amendment is bad public policy.

The League of Women Voters of Oregon opposed SB 1137 in the Senate. We now oppose SB 500B and ask for your help in protecting cities' right to vote meaningfully on annexations.

Thank you.

Paula Krane
President

CLIFF TROW
POLK AND BENTON COUNTIES
DISTRICT 18

REPLY TO ADDRESS INDICATED:

- ☐ Senate Chamber
Salem, OR 97310
(503) 986-1718
- ☐ 1835 NW Juniper Place
Corvallis, OR 97330
(503) 752-5395



OREGON STATE SENATE
SALEM, OREGON
97310

Attachment CC-A, Page 48 of 65

LEGISLATIVE ASSIGNMENTS

Member:
Education Committee 1985
Committee on Finance & Tax
Policy 1995
Chair:
Ways & Means 1993
Ways & Means Subcommittees:
Natural Resources 1991
Public Safety 1989
Transportation 1987
Interim Executive Appointments 1991
1985
Education 1989, 1987, 1983, 1977
Revenue 1982
Labor 1981
Intergovernmental Relations 1980
President Pro Tempore 1981, 1983

June 18, 1997

Representative Bob Montgomery
Chair, House Committee on Transportation
H-454 State Capitol
Salem, OR 97310

Dear Representative Montgomery and Committee Members:

I am testifying today against Senate Bill 1137-A, which would take away the right of voters to decide annexation questions. This so-called compromise is still bad public policy, and I urge the Committee not to approve it.

Mr. Chairman, Committee Members, there are a number of good reasons to oppose this bill. It does not take place within the context of a statewide debate over the costs and benefits of growth. Furthermore, the annexation process in Corvallis has worked well because it deepens public understanding of and support for the statewide land use planning process. In the last twenty years, Corvallis voters have approved an overwhelming majority of proposed annexations.

But the main reason I oppose this bill is because it takes away the people's right to vote. Oregonians treasure this precious right, which many states do not allow their citizens. We see it on other issues, statewide and local. Our public participation process is what makes Oregon different. We hear from our constituents over and over again that they do not want their right to vote to be taken away.

Citizens have as much right to participate in the future of their communities as do the developers and realtors who promote development to make money. It also seems that this bill creates an imbalance of power between the DLCD and the average voter in our communities. Land use planning ultimately belongs to the people and the voters, not the developers and planners, and this bill would take away power from the voters. I urge you to vote against this bill.

Thank you very much, and I'd be happy to answer any questions you might have.



Office of the Mayor
501 SW Madison
P.O. Box 1083
Corvallis, OR 97339-1083
(503) 757-6985
FAX (503) 757-6780

May 21, 1997

The Honorable Veral Tarno, Chair
Senate Water and Land Use Committee
State Capitol, Room 332
Salem, OR 97310

Dear Senator Tarno and Committee Members:

Thank you for your past and continued careful consideration of testimony concerning SB 1137. I will not take more of your time in oral testimony, but did want to highlight in writing a few points about growth. Corvallis does not oppose growth; what we oppose is growth directed by a State agency and builders association which dilutes our self-governance and community livability. My key points are:

Goal #1 - Citizen Involvement. The annexation history on the back of this sheet is testimony to citizen involvement. Our history is that annexations are approved. Sometimes annexation requests need to be adjusted or reduced in size to address community concerns, but the reductions and adjustments are due to direction and information resulting from citizen involvement and a community-wide evaluation of the project as it relates to DLCD-approved Comprehensive Plan policies. Goal #1 mandates citizen involvement.

Fair Share of State Growth. Our State approved Comprehensive Plan targeted a 1.2% growth rate. The last six years we have grown at 1.62% and our annual growth rate since 1970 is 1.32%. We are in compliance and have accepted our share of growth with our voter-approved annexations.

Facilitating Growth. Corvallis does not limit growth. Corvallis facilitates growth based on community values rather than homebuilders or State agency values. We do it in compliance with State land use laws. Annexations approved since 1976 provide for an estimated 13,650 housing units. We construct on average 145 single family and 175 multi-family units annually. Clearly, the record shows that Corvallis is not using voter-approved annexations to stop growth.

Supply. Twenty-three percent of all land within the City limits is undeveloped. Corvallis has 1,340 acres of undeveloped residential land and 660 acres of undeveloped non-residential land. Corvallis has more undeveloped land in the City today than we had prior to voter-approved annexations.

Corvallis is not the poster child for "no growth." We are a good example of a community that chooses to grow in compliance with State land use laws, but also according to our community values.

Sincerely,

Helen M. Berg
Helen M. Berg
Mayor

2047

City of Corvallis
Annexations Referred to Voters Since November 1, 1976
 Attachment CC-A, Page 50 of 55
 21-May-97

Application Name	Case #	Acres	Initially or Eventually Passed	Never Passed
Timberhill	76-6	454.04	454.04	
Walnut Park/Kinderman/Nored	76-5-7-8	121.86	121.86	
Hewlett Packard	77-2	61.14	61.14	
Harrison Heights	77-1a	141.18		
Harrison Heights	77-1b	141.18		
OSU Heritage	82-7	359.11		359.11
OSU Heritage	83-4	357.96		
Frager	96-3	139.29		
Sequoia Creek	77-3	76.74		
Sequoia Creek	80-5	80.60		
Conser & Dawson	78-3	36.00		
Seavy Ave. (Stewart)	81-5	49.00	49.00	
Davis (Circle Blvd)	81-7	9.00	9.00	
Pederson (Seavy Avenue)	83-2	4.70		4.70
Allen Bros (Circle/NE Conser)	87-3	14.12	14.12	
Remaining acres not annexed from largest request (80.60)				3.78
Chorak	77-2	46.23		
Chorak	87-4	45.33	45.33	
Starker	78-4	268.03		
Sunset Park	79-1	255.80	255.80	
Valley View Reservoir Park	78-6	43.96		43.96
Island Annex ROW	78-5	5.50	5.50	
Banks	79-2	2.12	2.12	
Four Square Gospel Church	79-3	35.92	35.92	
Summy (NW Highland Terrace)	80-1	14.60	14.60	
S Corvallis	80-2	58.59	58.59	
Glenridge	80-3	54.49	54.49	
Crystal Lake (Lilly Square)	80-4	12.88	12.88	
First Congregational Church	80-6	5.95	5.95	
Dyer/Smith (53rd/Hwy 20/34)	81-2	2.00	2.00	
Boertje (Hwy 99)	81-3	37.09	37.09	
OSU Research Facilities	81-4	50.00	50.00	
Hewlett Packard	81-6	85.40	85.40	
State Highway	82-1	22.00	22.00	
Hutley (SW 53/Hwy 20/34)	82-2	1.56	1.56	
Neer Avenue	82-4	21.00	21.00	
SW 35th Street	82-5	20.00	20.00	
McKee High Tech Park	82-3	143.40		
McKee	83-1	147.36		
McKee	84-2	134.00	134.00	
South (Ponderosa Ave)	82-6	143.17		
South	84-1	139.00	139.00	
Chavez	83-3	2.10	2.10	
Riverpark South	85-1	369.56	369.56	
SE Riverfront (Evanite)	87-1	197.24	197.24	
McFadden (Circle/Walnut)	89-1	64.37		
McFadden	90-1	64.37	64.37	
Alberti	90-2	30.40	30.40	
Barley Hill	91-1	10.00	10.00	
Brookside Meadows	93-1	14.63	14.63	
Owens Farms	94-2	265.00		265.00
Rivergreen Estates	94-3	134.00		
Rivergreen Estates	95-1	140.30	140.30	
Pleasant View	96-1	41.35	41.35	
Meredith	96-2	1.82	1.82	
Highland Dell	96-4	26.17		26.17
Totals			2,584.16	702.72

Above list are only those annexations referred to voters. Health hazard annexations are not included.

Denotes annexations approved.



LEAGUE OF WOMEN VOTERS®
OF OREGON

March 10, 2016

To: Governor Kate Brown

Email to: ivo.trummer@oregon.gov

Re: REQUEST FOR VETO of Senate Bill 1573, Voter and Local Charter Preemption

The League of Women Voters is a nonpartisan, grassroots political organization that encourages informed and active participation in government. The League has numerous positions related to citizen participation and access. **We support city and county home rule** and have always advocated that local citizens have the right to bring matters before their local constituents on a variety of issues. We have also long supported our statewide land use planning system **with local implementation**. It is because of these long-standing positions that we ask that you **VETO SB 1573A**.

The League understands that there may be some **perceived** conflict between our current land use planning program and the 20-year land supply requirement and voter annexation. But voter annexation has been upheld in the courts (See Heritage Enterprises vs Corvallis (708 P.2d 601 (OR. 1985))

"The separate decision of the electorate whether to annex, as opposed to the determination whether the proposed annexation would comply with the comprehensive plan, was not a 'land use decision' within the meaning of ORS chapter 197.").

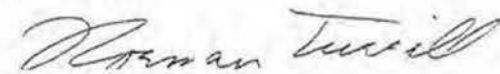
Since the first voter annexation charter amendment in 1976, a few cities have used this citizen tool to have a thorough conversation in these cities around whether a particular piece of land was ready to be added and who would pay for the infrastructure (not all cities have systems development charges, nor do they fully pay for the costs associated with addition into the city). **The bill does not require the property owner(s) to fund the needed infrastructure nor other important public services such as police and fire.**

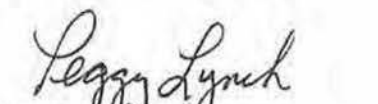
We believe the bill **requires** a city to annex territory under certain circumstances **whether or not they have the services to support that annexation or whether or not the city's long-term annexation plans fit into this particular property's annexation at this time.**

Special districts are often the service provider of choice for areas within Metro's Urban Growth Boundary. But that is not true in much of the state. Cities themselves more commonly provide basic services and there are only county-level services in these urban growth boundary areas. Cities have differing urban growth boundary sizes meaning that there can be choices as to which land should be annexed under what timeline. The current system **does not require** that properties come into cities at the whim of developers or property owners. The current system assumes that local governments and their citizens have **local control** to determine their destiny.

It is because of the above concerns that the League asks that you **VETO SB 1573A** and reject this usurpation of local control.

Sincerely,


Norman Turrill
LWV of Oregon President


Peggy Lynch
Natural Resources Coordinator

cc: Richard M. Whitman, Governor's Natural Resources Policy Director

Please uphold the right of voters in Corvallis to determine what land can be annexed to the City.

I do understand that some of you probably think it would be wonderful to not have to listen to hours of testimony when annexations are proposed. However, this is the rule in Corvallis and I ask that you defend that ordinance.

Jim Brewer's summary was very well done and that is appreciated.

I do not really care how you proceed in opposing HB1573, just that you do that. I know that several groups are looking into possible ways of approaching the issues.

Three questions I ask you to clarify as you move forward.

1. How will it be determined if this is a valid law or not? Will one side or the other have to file a lawsuit?
2. Home Rule Authority. If the state legislature can so easily remove one law on Home Rule, how easy will it be for them to follow this precedent take away many more areas of local control? That would be so wrong.
3. What about a temporary moratorium until the Home Rule Authority has been determined. HB1573 is immediately effective? How many annexations decisions can be made in a local community before the validity of HB1573 is determined?

Louise Marquering

Corvallis, 97330



Oregon Communities

For a Voice In Annexations

Promoting and Protecting Citizen Involvement in Land Use Issues

PO Box 1388, North Plains, OR 97133 • (541) 747-3144 • www.ocva.org

Voting on Annexations is Goal 1

As we keep saying, it's all about citizen involvement.

In 1993, Oregon's legislature passed Senate Bill 122, (now ORS 195). A key purpose of this law was to provide a mechanism by which cities could annex some, most or all of their urban growth boundaries (UGBs) in one fell swoop.

But all sense of fairness and equity in the ORS-195 process was destroyed by its final step: **a vote of the city residents and those in the area(s) targeted for annexation** to approve or deny the plan.

Follow the story of OCVA's efforts to reform ORS 195, starting from its roots in SB 122 through its reform in 2005 via HB 2484, which restored the voice of the citizens in ORS 195 annexation elections.

Download or read "[Hostile Takeover](#)", OCVA's updated history of ORS 195 and its reform.

Our 2007 legislative campaign to reform island annexation helped make Oregon's annexation statutes fair and democratic.

Download or read "[Islands In The Storm](#)", The history of OCVA's involvement in the successful effort to reform ORS 222.750, Oregon's "Island Annexation" statute. (PDF, 60KB)

We welcome any opportunity to assist in correcting problems SB 1573 has created for Oregon cities and their citizens.

Sincerely, the Officers and Directors of Oregon Communities for a Voice in Annexations

Officers

Co-Chair: Richard Reid, Salem

Co-Chair: Jeffrey R. Lamb, Philomath

Secretary: [Jerry Ritter](#), Springfield UGB

Treasurer: [Brian Beinlich](#), North Plains

Board of Directors

[Bill Bodden](#), Redmond

[Francis Gilbert](#), Rogue River

[Kathy Sayles](#), Washington County

[Michael Sheehan](#), Scappoose

[Don Smith](#), Clackamas

Oregon Communities that obtained the right to vote on annexations

Attachment CC-A, Page 54 of 55

CITY:	DATE OBTAINED:	POPULATION est.	CONTACT:
1) Albany	03/98	50,720	cityofalbany.net
2) Banks	11/981	775	cityofbanks.org
4) Corvallis	05/77	55,345	ci.corvallis.or.us
5) Culver	11/98	1,370	cityofculver.net
6) Grants Pass	11/01	34,855	grantspassoregon.gov
7) Happy Valley	09/98	15,575	ci.happy-valleyor.gov
8) Jefferson	11/95	3,150	city.jeffersonoregon.us
9) Lake Oswego	11/98	36,990	<u>ci.oswego.or.us</u>
10) McMinnville	05/96	32,510	ci.mcminnville.or.us
11) Monmouth	03/99	9,720	ci.monmouth.or.us
12) Mt. Angel	09/05	3,310	
13) Newberg	07/99	22,580	
14) North Plains	09/96	22,015	
15) Oregon City	05/99	33,390	
16) Philomath	05/954,	625	
17) Phoenix	08/98	4,570	
18) Rivergrove	03/99	445	
19) Rogue River	09/96	2,145	
20) Salem	05/00	157,770	cityofsalem.net
21) Sandy	11/989,	990	
22) Scappoose	05/996,	700	

Oregon Communities that obtained the right to vote on annexations

Attachment CC-A, Page 55 of 55

23) Sherwood	03/98	8,575
24) Sisters	11/96	2,115
25) St. Helens	03/99	12,895
26) St. Paul	11/97	420
27) Talent	07/98	6,170
28) Turner	11/98	1,865
29) West Linn	05/98	25,425
30) Wheeler	3/08	415
Total Population		576,240

CHAPTER 51**AN ACT**

SB 1573

Relating to boundary changes; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2016 Act is added to and made a part of ORS 222.111 to 222.180.

SECTION 2. (1) This section applies to a city whose laws require a petition proposing annexation of territory to be submitted to the electors of the city.

(2) Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city shall annex the territory without submitting the proposal to the electors of the city if:

(a) The territory is included within an urban growth boundary adopted by the city or Metro, as defined in ORS 197.015;

(b) The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;

(c) At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and

(d) The proposal conforms to all other requirements of the city's ordinances.

(3) The territory to be annexed under this section includes any additional territory described in ORS 222.111 (1) that must be annexed in order to locate infrastructure and right of way access for services necessary for development of the territory described in subsection (2) of this section at a density equal to the average residential density within the annexing city.

(4) When the legislative body of the city determines that the criteria described in subsection (2) of this section apply to territory proposed for annexation, the legislative body may declare that the territory described in subsections (2) and (3) of this section is annexed to the city by an ordinance that contains a description of the territory annexed.

SECTION 3. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Approved by the Governor March 15, 2016

Filed in the office of Secretary of State March 15, 2016

Effective date March 15, 2016

Application Received	
120th DAY (Original)	
180th DAY	

CASE NAME:		Annexation Calendar			CASE NO.:	
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
3-Sep	4-Sep	5-Sep	6-Sep	7-Sep	8-Sep	9-Sep
CHANGE THE DATE IN THE CELL ABOVE TO ADJUST ALL DATES ON THE CALENDAR		Application Received				
10-Sep	11-Sep	12-Sep	13-Sep	14-Sep	15-Sep	16-Sep
	Application Routed					
17-Sep	18-Sep	19-Sep	20-Sep	21-Sep	22-Sep	23-Sep
					Comments Due	
24-Sep	25-Sep	26-Sep	27-Sep	28-Sep	29-Sep	30-Sep
					SRC Letter	
1-Oct	2-Oct	3-Oct	4-Oct	5-Oct	6-Oct	7-Oct
8-Oct	9-Oct	10-Oct	11-Oct	12-Oct	13-Oct	14-Oct
		Resubmittal Due				
15-Oct	16-Oct	17-Oct	18-Oct	19-Oct	20-Oct	21-Oct
22-Oct	23-Oct	24-Oct	25-Oct	26-Oct	27-Oct	28-Oct
			Notice (PC)		Engineering staff report due - Track 1	
29-Oct	30-Oct	31-Oct	1-Nov	2-Nov	3-Nov	4-Nov
					Staff Report due to copy - Track 1	
5-Nov	6-Nov	7-Nov	8-Nov	9-Nov	10-Nov	11-Nov
			Publish PC staff report - Track 1			
12-Nov	13-Nov	14-Nov	15-Nov	16-Nov	17-Nov	18-Nov
			PC (ph) - Track 1			
19-Nov	20-Nov	21-Nov	22-Nov	23-Nov	24-Nov	25-Nov
				Thanksgiving	Thanksgiving	
26-Nov	27-Nov	28-Nov	29-Nov	30-Nov	1-Dec	2-Dec
3-Dec	4-Dec	5-Dec	6-Dec	7-Dec	8-Dec	9-Dec
			PC (delibs) - Track 1	PC NOD - Track 1		
10-Dec	11-Dec	12-Dec	13-Dec	14-Dec	15-Dec	16-Dec
17-Dec	18-Dec	19-Dec	20-Dec	21-Dec	22-Dec	23-Dec
	Funky Notice (CC) Track 1	PC Appeal Deadline - Track 1				
24-Dec	25-Dec	26-Dec	27-Dec	28-Dec	29-Dec	30-Dec
	Christmas Day			CC staff report due for copy - Track 1		
31-Dec	1-Jan	2-Jan	3-Jan	4-Jan	5-Jan	6-Jan
	New Years Day	CC (staff report) - Track 1				
7-Jan	8-Jan	9-Jan	10-Jan	11-Jan	12-Jan	13-Jan
	CC (public hearing) - Track 1					
14-Jan	15-Jan	16-Jan	17-Jan	18-Jan	19-Jan	20-Jan
	MLK Jr Day					
21-Jan	22-Jan	23-Jan	24-Jan	25-Jan	26-Jan	27-Jan

28-Jan	29-Jan	30-Jan	31-Jan	1-Feb	2-Feb	3-Feb
4-Feb	5-Feb	6-Feb	7-Feb	8-Feb	9-Feb	10-Feb
	CC (delibs)					
11-Feb	12-Feb	13-Feb	14-Feb	15-Feb	16-Feb	17-Feb
18-Feb	19-Feb	20-Feb	21-Feb	22-Feb	23-Feb	24-Feb
	Presidents Day	CC (findings, ballot title, explanatory statement, display ad, resolution)			CMO: publish "Notice of Receipt of Ballot Title" in GT and website CMO: last day for city to file with local elections official	
25-Feb	26-Feb	27-Feb	28-Feb	1-Mar	2-Mar	3-Mar
4-Mar	5-Mar	6-Mar	7-Mar	8-Mar	9-Mar	10-Mar
11-Mar	12-Mar	13-Mar	14-Mar	15-Mar	16-Mar	17-Mar
					CMO: deadline to file Notice of Measure Election and Explanatory Statement w. Benton County	
18-Mar	19-Mar	20-Mar	21-Mar	22-Mar	23-Mar	24-Mar
25-Mar	26-Mar	27-Mar	28-Mar	29-Mar	30-Mar	31-Mar
1-Apr	2-Apr	3-Apr	4-Apr	5-Apr	6-Apr	7-Apr
8-Apr	9-Apr	10-Apr	11-Apr	12-Apr	13-Apr	14-Apr
15-Apr	16-Apr	17-Apr	18-Apr	19-Apr	20-Apr	21-Apr
22-Apr	23-Apr	24-Apr	25-Apr	26-Apr	27-Apr	28-Apr
			Publish in GT per LDC 2.6.30.13	Publish in GT per LDC 2.6.30.13	Publish in GT per LDC 2.6.30.13	
29-Apr	30-Apr	1-May	2-May	3-May	4-May	5-May
6-May	7-May	8-May	9-May	10-May	11-May	12-May
13-May	14-May	15-May	16-May	17-May	18-May	19-May
		ELECTION DAY *				
20-May	21-May	22-May	23-May	24-May	25-May	26-May
27-May	28-May	29-May	30-May	31-May	1-Jun	2-Jun
3-Jun	4-Jun	5-Jun	6-Jun	7-Jun	8-Jun	9-Jun
10-Jun	11-Jun	12-Jun	13-Jun	14-Jun	15-Jun	16-Jun
17-Jun	18-Jun	19-Jun	20-Jun	21-Jun	22-Jun	23-Jun

CHAPTER 2.6 ANNEXATIONS

Section 2.6.10 - BACKGROUND

The process of land Annexation allows for the orderly expansion of the City and adequate provision for public facilities and services. The City Charter requires voter approval of an Annexation unless an Annexation is mandated by state law. For example, Health Hazard Annexations are mandated by state law and do not require voter approval.

Section 2.6.20 - PURPOSES

The procedures and review criteria for proposed Annexations are established for the following purposes:

- a. Maximize citizen involvement in the Annexation review process;
- b. Establish a methodology to evaluate need, serviceability, and the economic, environmental, and related social effects of proposed Annexations;
- c. Provide adequate public information and sufficient time for public review before an Annexation election;
- d. Ensure adequate time for City staff review; and
- e. Allow for simultaneous review of multiple Annexation proposals.

Section 2.6.30 - PROCEDURES

An application filed for Annexation shall be reviewed in accordance with the following procedures:

2.6.30.01 - Determination of Annexation Type

The Director shall determine whether an application is for a Minor or Major Annexation as follows:

- a. **Minor Annexation** - Intended to address situations where properties are proposed for Annexation and, by virtue of their size and development potential, have negligible impacts on surrounding properties and neighborhoods, and on the community as a whole. These Annexations are typically proposed to gain access to public services, such as sanitary sewer and water facilities, before actual Health Hazards are declared; to incorporate infill sites into the City; and/or to allow a limited level of urban development to occur on existing parcels. Minor Annexation provisions

are not intended to provide for piecemeal Annexations whereby a property owner within the county partitions a small piece of land specifically to be classified as a Minor Annexation, and then continues to partition small sites and propose multiple Minor Annexations.

An Annexation shall be considered Minor if all of the following conditions exist:

1. No more than one parcel is involved;
2. For residential Annexations, the parcel is capable of providing not more than 10 dwelling units (at maximum allowed density per gross acre). For commercial and industrial Annexations, the parcel is no greater than one acre; and
3. City services are contiguous to the parcel.

When addressing the review criteria in Section 2.6.30.06.a and Section 2.6.30.06.b, a Minor Annexation proposal need not provide the same level of detail as a Major Annexation proposal. See Section 2.6.30.06 and Section 2.6.30.07 for specifics. All other submittal requirements and review criteria, however, are applicable.

- b. Major Annexation** - An Annexation shall be considered Major if it does not meet all three conditions for a Minor Annexation as outlined in "a", above.

2.6.30.02 - Application Filing Deadlines

Annexation elections are scheduled for May and November of each year and application deadlines are established accordingly as follows: applications for Minor and Major Annexations must be filed with the Community Development Department before 5:00 p.m. on the last working day in September for a ballot election in May, and on the last working day in March for a ballot election in November.

2.6.30.03 - Application Requirements

When the Director deems any requirement below unnecessary for proper evaluation of a proposed application, it may be waived.

Prior to formal submittal of an application, the applicant is encouraged to participate in an informal pre-application conference with Community Development Department staff to discuss the proposal, the applicant's requirements, and the applicant's materials developed in response to this Code's applicable requirements.

Applications for Annexation shall be made on forms provided by the Director and shall be accompanied by the following:

- a.** Location and description of the subject property(ies), including all of the following, as relevant: address; tax assessor map and tax lot number; parcel number; written description of the boundaries of the proposal; and one set of assessor's maps of the subject site and surrounding area, with the subject site outlined in red;
- b.** Signed consent by the subject property's owner(s) and/or the owner's legal representative(s) to dispense with an election of the area to be Annexed as provided by state law. If a legal representative is used as a signatory, written proof of ability to be a signatory shall be furnished to the City. The owner's name(s) and address(es), and the applicant's name, address, and signature shall also be provided. Because Health Hazard Annexations do not involve an election, signed consent to the Annexation by the property owner(s) and/or the owners' legal representative(s) shall suffice;
- c.** Fifteen copies of the narrative, on 8.5- by 11-in. sheets, and 15 copies of graphics at an 8.5- by 11-in. size. The Director may request additional copies of the narrative and/or graphics for routing purposes, if needed. Related names/numbers must be legible on the graphics. The Director may also require some or all graphics at an 11- by 17-in. size if, for legibility purposes, such a size would be helpful;
- d.** Six sets of full-scaled black line or blueprint drawings of the graphic(s), with sheet size not to exceed 24- by 36-in. Where necessary, an overall plan with additional detail sheets may be submitted;
- e.** An electronic version of these documents (both text and graphics, as applicable) if an applicant has produced part or all of an application in an electronic format. The applicant shall coordinate with the City regarding compatible electronic formats, to the greatest extent practicable;
- f.** Boundary survey of the property to be Annexed, certified by a registered surveyor; and a legal description of the property and associated rights-of-way to be Annexed that includes the road or street right-of-way adjacent to the property. Copies of the legal description shall be provided in both written and electronic format; and
- g.** If the Annexation proposal includes areas planned for open space, general community use, or public or semi-public ownerships, the Annexation request shall be accompanied by a Comprehensive Plan Map Amendment

request consistent with Section 2.6.30.06.d and Chapter 2.1 - Comprehensive Plan Amendment Procedures.

h. Graphic Requirements

Graphics shall include the following information where applicable:

1. Public Notice Map - Typically a street map at one in. = 800 ft. as per the City's public notice format;
2. Zoning Map - Typically one in. = 400 ft., but up to one in. = 800 ft., depending on the size of the site, with a key that identifies each zone on the site and within 1,000 ft. of the site as per City format;
3. Comprehensive Plan Map - Typically one in. = 800 ft. with a key that identifies each land use designation on the site and within 1,000 ft. of the site as per City format;
4. Existing Land Use Map - Typically a topographic map that extends at least 1,000 ft. beyond the site. The map shall include building footprints and distinguish between single-family, multi-family, Commercial, and Industrial Uses, as well as other significant features such as roads, parks, schools, and Significant Natural Features identified by Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions;
5. Significant Natural Features Map(s) - Maps shall identify Significant Natural Features of the site, including but not limited to:
 - a) All information, associated Significant Natural Feature maps, and preservation plans required by Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions, as applicable;
 - b) All Jurisdictional Wetlands not already shown as part of "a," above. While not all Jurisdictional Wetlands are locally regulated by Chapter 4.13 - Riparian Corridor and Wetland

Provisions, they need to be shown so that the City can route the application to the appropriate state and federal agencies for comment; and

- c) Archaeological sites recorded by the State Historic Preservation Office (SHPO).
6. Graphics for Annexation applications shall be drawn to scale and shall contain a sheet title, date, north arrow, and legend placed in the same location on each sheet and contain the following information:
- a) Vicinity Map - A map of the area to be Annexed that shows adjacent City and county territory at least 300 ft. beyond the boundaries of the Annexation site for Minor Annexations, and at least 1,200 ft. beyond the boundaries of the site for Major Annexations. The map shall include features such as existing streets and parcel boundaries; existing structures; driveways; utilities; Significant Natural Features regulated by Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions; Minimum Assured Development Area information from Chapter 4.11 - Minimum Assured Development Area (MADA), if applicable; and any other information that, in the Director's opinion, would assist in providing a context for the proposed Annexation. The map shall be 8.5- by 11-in. size for Minor Annexations, and both 8.5- by 11-in. and 24- by 36-in. size for Major Annexations. The Director may require an area greater than 1,200 ft. beyond the site if such maps would be helpful, such as in cases where an adjacent property is large and a view of the whole parcel would be helpful, or when existing infrastructure is far away from the site.
 - b) General Land Use Plan - A map that illustrates the following, at a minimum, in sufficient detail to apply the review criteria in Section 2.6.30.06:
 - 1) Proposed land use zones and densities;
 - 2) Transportation corridors and functional classifications of streets within and surrounding the Annexation area;

- 3) Site utilities within and surrounding the Annexation area;
 - 4) Significant Natural Features covered in 2.6.30.03.h.5, above;
 - 5) Topographic contours at two-ft. intervals and identification of grades governed by Chapter 4.14 - Landslide Hazard and Hillside Development Provisions; and
 - 6) Information on land areas within at least 300 ft. of the subject property, indicating the relationship of the Annexation area to adjacent land uses. The Director may require an applicant's General Land Use Plan to include information on lands in excess of 300 ft. from an Annexation site, as in cases where an adjacent property is large and a view of the whole parcel would be helpful. The General Land Use Plan shall identify land uses, lot lines, existing buildings, driveways, transportation connections, utilities, and Significant Natural Features covered in "5," above. Illustrative cross-sections of streets shall also be provided. An aerial photo may be used as the base for the General Land Use Plan. Ortho photos are available at City Hall.
- c) The applicant may provide a more detailed General Land Use Plan and may consolidate the Annexation proposal with other applications such as a Tentative Subdivision Plat. However, a Detailed Development Plan is not required at the Annexation phase. If the applicant chooses to consolidate land use applications, all of the submittal requirements as stated in other chapters of this Code shall be met.

i. Narrative Requirements

A written statement shall include the following information:

1. Statement of availability, capacity, and status of existing water, sewer, storm drainage, transportation, park, and school facilities; and franchise utilities. The franchise utility companies shall provide a written statement confirming the ability to serve the site. The applicant shall obtain information from the affected service and utility providers using GIS base maps where available;

2. Statement of increased demand for the facilities that will be generated by the proposed Annexation. The applicant shall refer to the criteria of the City's facility master plans, available via the City Engineer, to determine the methodology used to estimate public facility demands. Information related to an actual development proposal may be included for informational purposes. At minimum, the demand calculations associated with the full range of development potential (min. to max.) under proposed land uses designations shall be addressed in the analysis;
3. Statement of additional facilities required to meet the increased demand and phasing of such facilities in accordance with projected demand. The applicant shall review adopted public facility plans, master plans, and capital improvement programs, and state whether additional facilities are planned or programmed for the Annexation area. Information related to an actual development proposal may be included for informational purposes. At minimum, the demand calculations associated with the full range of development potential (min. to max.) under the proposed land uses designations shall be addressed in the analysis;
4. A traffic impact study shall be required in accordance with Section 4.0.60.a;
5. Statement outlining the method and source of financing required to provide additional facilities;
6. Discussion demonstrating the public need for the Annexation. To provide consistency in reviewing Annexations, the applicant shall use the information sources and methodology described in Section 2.6.30.07; and
7. Comprehensive narrative of potential positive and negative effects of the proposed Annexation related to "a," through "c," below. For properties containing a Natural Resource and/or Natural Hazard Overlay, the narrative shall include a discussion of the applicable provisions of Chapter 2.11 - Floodplain Development Permit, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions.

- a) Issues of need, serviceability, economics, environmental, and related social effects of the proposed Annexation on the community as a whole;
- b) Issues of need, serviceability, economics, environmental, and related social effects of the proposed Annexation on the comprehensive neighborhood of which the Annexation will become a part; and
- c) Proposed actions to mitigate negative effects/impacts.

The information provided by the applicant shall be used to assist in weighing the advantages and disadvantages of the proposed Annexation. The information shall address all aspects of the review criteria in Section 2.6.30.06, and the advantages and disadvantages shall be discussed in terms of those listed in the review criteria and further detailed in Section 2.6.30.07.

- j. Required fees as described in LDC § 1.2.100.01.

2.6.30.04 - Acceptance of Application

- a. The Director shall review the application in accordance with Chapter 2.0 - Public Hearings.
- b. After accepting a complete application, the Director shall schedule a public hearing to be held by the Planning Commission. Notice of the hearing shall be provided in accordance with Chapter 2.0 - Public Hearings.
- c. After an application has been accepted as complete, any revisions to it that result in the need for an additional public notice to be mailed shall be regarded as a new application. Such new application shall require additional filing fees and rescheduling of the required public hearing.

2.6.30.05 - Staff Evaluation

The Director shall prepare a report that evaluates whether the Annexation proposal includes adequate information for the hearing authority to determine the proposal's compliance with the review criteria in Sections 2.6.30.06 and 2.6.30.07. The report shall include a recommendation to the Planning Commission and City Council stating whether the Annexation includes adequate information for the electorate to make an informed decision.

The Planning Commission and City Council shall determine whether the Annexation proposal complies with the review criteria and whether the Annexation request should be referred to the electorate.

2.6.30.06 - Review Criteria

Requests for Annexations shall be reviewed to ensure consistency with the applicable policies of the Comprehensive Plan, particularly Article 14, and other applicable policies and standards adopted by the City Council and State of Oregon.

Annexations can only be referred to the voters when the proposed Annexation site is within the City's Urban Growth Boundary (UGB), and where the findings below are made. The criteria are highlighted in bold type.

a. The applicant has demonstrated a public need for the Annexation -

1. Minor Annexations - Factors to be considered in evaluating public need for Minor Annexations shall include, but are not limited to:
 - a) Reason for the Annexation;
 - b) Health issues;
 - c) Adequate demonstration that the Annexation provides for the logical urbanization of land;
 - d) Whether the site can be served with public facilities; and
 - e) Discussion of the applicable livability indicators and benchmarks as specified in Section 2.6.30.07.c.

Minor Annexation proposals need not include the calculations relative to a five-year supply of serviceable land that are required in "2," below, for Major Annexations.

2. Major Annexations - Factors to be considered in evaluating public need for Major Annexations shall include, but are not limited to:
 - a) The five-year supply of serviceable land of the Annexation's land use category (single-family, multi-family, Commercial, or Industrial). Annexations of land designated as Public Institutional, Open Space-Conservation, or Open Space-Agriculture on the Comprehensive Plan Map are exempt from this criteria;
 - b) Availability of sufficient land of this type (single-family, multi-family, Commercial, or Industrial) to ensure choices in the market place. Annexations of land designated as Public

Institutional, Open Space-Conservation, or Open Space-Agriculture on the Comprehensive Plan Map are exempt from this criteria; and

- c) Compliance with adopted community-wide livability indicators and benchmarks relative to Major Annexations, as identified in Section 2.6.30.07.c.

The City shall provide annually updated Citywide data for the applicant to use in calculating supply and demand for the major land use categories (single-family residential, multi-family residential, Commercial and Industrial). Residential land supply and demand data shall be calculated using housing units. Commercial and Industrial land supply and demand data shall be calculated using acres.

The required data sources and methodologies for use in determining land supply and demand for Major Annexations, and the requirements for addressing community-wide benchmarks, are outlined below in Section 2.6.30.07.

- b. **The Annexation provides more advantages to the community than disadvantages** - To provide guidance to applicants, examples of topics to address for the advantages versus disadvantages discussion are highlighted in Section 2.6.30.07.

- 1. Minor Annexations - Minor Annexation proposals shall include a general discussion regarding:
 - a) Advantages and disadvantages of the Annexation. Examples include the existence of a Health Hazard situation or the existence of Significant Natural Features addressed in Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and/or Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. Also relevant is whether or not the Minimum Assured Development Area information from Chapter 4.11 - Minimum Assured Development Area (MADA) is applicable; and
 - b) Applicable livability indicators and benchmarks identified in Section 2.6.30.07.c.

2. Major Annexations - Major Annexation proposals shall include a discussion of advantages and disadvantages in terms of the methodologies outlined in Section 2.6.30.07. Applicants are required to document the methodologies and criteria used. The Director will review the applicant's arguments, but will not conduct independent research to verify or justify them.

c. The site is capable of being served by urban services and facilities required with development - The developer is required to provide urban services and facilities to and through the site. At minimum, both Minor and Major Annexations shall include consideration of the following:

1. Sanitary sewer facilities consistent with the City's Sanitary Sewer Master Plan and Chapter 4.0 - Improvements Required with Development;
2. Water facilities consistent with the City's Water Master Plan, Chapter 4.0 - Improvements Required with Development, and fire flow and hydrant placement;
3. Storm drainage facilities and drainageway corridors consistent with the City's Stormwater Master Plan, Chapter 2.11 - Floodplain Development Permit, Chapter 4.0 - Improvements Required with Development, Chapter 4.5 - Floodplain Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions;
4. Transportation facilities consistent with the City's Transportation Plan and Chapter 4.0 - Improvements Required with Development; and
5. Park facilities consistent with the City's Parks Master Plan.

d. If the Annexation proposal includes areas planned for open space, general community use, or public or semi-public ownerships, the Annexation request shall be accompanied by a Comprehensive Plan Map Amendment as outlined in "1," and "2," below -

1. Areas planned for open spaces or future general community use, including planned parks, preserves, and general drainageway corridors, shall be re-designated on the Comprehensive Plan Map as Open Space-Conservation.
2. Existing, proposed, or planned areas of public or semi-public ownership, such as Oregon State University facilities or lands, school sites, City reservoirs, and portions of the Corvallis Municipal

Airport, shall be re-designated on the Comprehensive Plan Map as Public Institutional.

Such required Comprehensive Plan Map Amendments shall be filed by the applicant concurrent with the Annexation request, in accordance with Chapter 2.1 - Comprehensive Plan Amendment Procedures.

- e. Compatibility** - The application shall demonstrate compatibility in the following areas, as applicable:
1. Basic site design - the organization of Uses on a site and its relationship to neighboring properties;
 2. Visual elements (scale, structural design and form, materials, etc.);
 3. Noise attenuation;
 4. Odors and emissions;
 5. Lighting;
 6. Signage;
 7. Landscaping for buffering and screening;
 8. Transportation facilities;
 9. Traffic and off-site parking impacts;
 10. Utility infrastructure;
 11. Effects on air and water quality (note: a DEQ permit is not sufficient to meet this criterion);
 12. Consistency with the applicable development standards, including the applicable Pedestrian Oriented Design Standards;
 13. Preservation and/or protection of Significant Natural Features, consistent with Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. Streets shall also be designed along contours, and structures shall be designed to fit the

topography of the site to ensure compliance with these Code standards.

2.6.30.07 - Methodologies for Some of the Review Criteria in Section 2.6.30.06

All of the provisions within this Section are required for Major Annexation proposals except for proposals or portions of proposals that include land with Comprehensive Plan designations of Public Institutional, Open Space-Conservation, or Open Space-Agriculture. Lands with these map designations are exempt from the provisions within "a," and "b," below. Minor Annexation proposals are subject only to the provisions within "c," below.

- a. Determining Five-Year Supply of Serviceable Land** - Serviceable land is land within the City limits capable of being served by public facilities.

When calculating a five-year supply of serviceable land, applicants shall refer to and follow the Council Policy addressing the five-year supply, as amended from time to time. This Policy outlines the accepted methodology and will result in more uniform application submittals.

- b. Providing information on land availability to ensure choices in the market place** - Comprehensive Plan Policy 14.3.6 states that "factors to be considered in evaluating public need for Annexation may include... the availability of sufficient land of this type to ensure choices in the market place." Minor Annexation applications are not required to include information on market choice. However, Major Annexation applications shall provide this information. Appropriate and encouraged market choice topics include, but are not limited to:

1. Information regarding a housing/jobs balance;
2. Housing rental rates and prices;
3. Vacancy rates; and
4. A comparison of housing costs related to incomes, land prices, and land availability.

The City does not independently review and verify documentation of this nature. Therefore, an applicant's market choice arguments shall be developed by a recognized professional in the field. Additionally, the applicant shall identify the methodologies used and the sources of information.

The Director will summarize the applicant's arguments and methodologies in the staff report provided to the hearing authority, and identify them as the applicant's arguments. The hearing authority shall determine the validity of the arguments based on the information provided by the applicant and on public comments during the public hearing process. The hearing authority shall also determine to what extent these arguments affect the criteria in Section 2.6.30.06.b.

c. Providing information on community-wide livability indicators and determining compliance with adopted community-wide benchmarks -

1. The City has just begun the process of identifying livability indicators to ultimately assist in the development of community-wide benchmarks. Additionally, many of the community-wide livability indicators are not applicable to Annexation proposals.
2. Table 2.6-1- Livability Indicators and Benchmark Criteria provides interim direction to applicants in addressing livability indicator and benchmark criteria. As the community further develops these livability indicators and benchmarks, this Section of this Code shall be updated accordingly.
 - a) The livability indicators and benchmarks in the following table are intended to be balanced and identified as advantages and disadvantages relative to an Annexation proposal. Compliance with all benchmarks is not required. However, when balanced and viewed in aggregate, the decision-makers need to find that the advantages to the community outweigh the disadvantages.
 - b) The number of applicable livability indicators and benchmarks varies, depending on the Comprehensive Plan Map designation(s) of the property involved in the Annexation request, as well as whether the Annexation is categorized as a Minor Annexation or a Major Annexation.
 - c) For those livability indicators and benchmarks that require distance measurements from an amenity to a proposed Annexation site, measurements shall be taken from the average point within the Annexation site.

Table 2.6 - 1 - Community-wide Livability Indicators and Benchmarks for Annexation Proposals

Note: The following livability indicators and benchmarks have been placed into the categories of the City's 2020 Vision Statement. As this categorization is a first attempt based upon the actual wording in the Vision Statement, there may need to be some re-categorization and/or other revisions with future updates of this Code.					
LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
Livability indicators and benchmarks relating to the Corvallis Vision 2020 Statement category of "Where People Live"					
Annexation Density	Average density of proposed Annexation relative to the average density of land within the City that is developed and of the same type (single-family or multi-family).	Meet or exceed the average density of land within the City, developed, and of the same type as the proposed Annexation (single-family or multi-family). Note: Information regarding existing density within the City may be obtained from the City's annual Land Development Information Report.	Residential ¹		Applies
			Commercial/Industrial ²		
			Open Space ³		
			Public Inst.		
Rural Development Potential	Type of county development that could occur if property not Annexed (depends on county land use policies in effect at time of proposed Annexation).	Development on land within the Urban Growth Boundary is done in a fashion that does not preclude urban-level development on the subject site and/or on adjacent properties within the UGB.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies
Adjacency to City	Percentage of the perimeter of the Annexation site that is enclosed within the City limits.	It is considered an advantage if 50 percent of the perimeter of an Annexation site is enclosed within the City limits.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies

LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
Development Plans	Concurrent processing of Detailed Development Plan and/or Tentative Subdivision Plat with Annexation request.	It is not considered a disadvantage and may be considered an advantage if an Annexation request is processed concurrently with a Detailed Development Plan and/or Tentative Subdivision Plat, even though such land use decisions may be changed after Annexation.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies
Distance to Bicycle and Pedestrian Access	Distance to bike lanes.	0.5-mile to bike lane.	Residential ¹		Applies
	Distance to sidewalk.	0.25-mile to sidewalk.	Commercial/Industrial ²		Applies
			Open Space ³		
	Distance to multi-use path.	0.5-mile to multi-use path.	Public Inst.		Applies
Connectivity & Extension of Bicycle and Pedestrian Facilities	It is considered an advantage if improvements proposed as part of the Annexation request would connect to and extend existing bicycle and pedestrian facilities.	Connection to existing pedestrian facilities and extension of them by at least 350 ft.; or connection to existing pedestrian facilities and filling a gap between existing pedestrian facilities of at least 100 ft.	Residential ¹		Applies
			Commercial/Industrial ²		Applies
		Connection to existing bicycle facilities and extension of them by at least 350 ft.; or connection to existing bicycle facilities and filling a gap between existing bicycle facilities of at least 100 ft.	Open Space ³		
			Public Inst.		Applies
Planned Public Transportation Improvements	Type and extent of public transportation improvements (street, bicycle, pedestrian) that are listed in City master plans and would occur with urban-level development of Annexation site.	It is considered an advantage if public transportation improvements (street, bicycle, pedestrian) would be installed with the Annexation, are listed in City master plans, and would enable other sites within the Urban Growth Boundary to ultimately develop.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies

LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
Distance to Shopping	Distance from neighborhood shopping opportunities (both existing and planned).	Annexation site is within 0.5-mile of neighborhood shopping opportunities (existing or planned). More advantage associated with shorter distances from existing (as opposed to planned) shopping opportunities and/or location within 0.5-mile from existing shopping opportunities.	Residential ¹		Applies
			Commercial/Industrial ²		Applies
			Open Space ³		
			Public Inst.		Applies
Affordable Housing	Housing Affordability.	It is considered an advantage if more than 50 percent of the proposed residential housing units are classified as Affordable Housing using the definition in Chapter 1.6 - Definitions. This benchmark to be refined with future update of this Code.	Residential ¹		Applies
			Commercial/Industrial ²		
			Open Space ³		
			Public Inst.		
Livability indicators and benchmarks relating to the Corvallis Vision 2020 Statement category of "Economic Vitality"					
Employment/Housing	Balance of jobs and housing.	To be developed as part of a future update of this Code, and following completion of regional studies.	Residential ¹		Applies
			Commercial/Industrial ²		Applies
			Open Space ³		
			Public Inst.		Applies
Economic Diversification	Diversity in type, scale, and location of professional, industrial, and commercial activities to maintain a low unemployment rate and to promote diversification of the local economy.	It is considered an advantage if the Annexation request supports diversity in type, scale, and location of professional, industrial, and commercial activities to maintain a low unemployment rate and to promote diversification of the local economy. To be refined as part of a future update of this Code.	Residential ¹		
			Commercial/Industrial ²		Applies
			Open Space ³		
			Public Inst.		

LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
<i>Livability indicators and benchmarks relating to the Corvallis Vision 2020 Statement category of "Protecting our Environment"</i>					
Natural Features	Acres and percentage of Annexation site with Significant Natural Features.	Consistency with Significant Natural Feature protections specified by Chapter 2.11 - Floodplain Development Permit, Chapter 4.2 - Landscaping, Buffering, Screening, and Lighting, Chapter 4.5 - Floodplain Provisions, Chapter 4.11 - Minimum Assured Development Area (MADA), Chapter 4.12 - Significant Vegetation Protection Provisions, Chapter 4.13 - Riparian Corridor and Wetland Provisions, and Chapter 4.14 - Landslide Hazard and Hillside Development Provisions. It is considered an advantage if Significant Natural Features are protected through Annexation, since they may be better protected within the City.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies
Distance to Transit	Distance from an existing transit line and/or bus stop.	Annexation site is within 0.5-mile of an existing transit line and/or bus stop.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³		
			Public Inst.	Applies	Applies
Distance to Major Street	Distance to nearest Collector and/or Arterial Street(s) that would serve the proposed Annexation site and is fully improved to City standards or is improved	Distance to nearest Collector and/or Arterial Street(s) that would serve the proposed Annexation site is 0.25-mile and is either fully improved to City standards or is improved to City standards with regard to bicycle and pedestrian facilities.	Residential ¹		Applies
			Commercial/Industrial ²		Applies
			Open Space ³		Applies

LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
	to City standards with regard to bicycle and pedestrian facilities.		Public Inst.		Applies
Intersection Load	Levels of service for intersections of Arterial and/or Collector Streets, as determined by the City's Traffic Engineer, within a one-mile radius of the site.	Levels of service for intersections of Arterial and/or Collector Streets affected by the proposal, as determined by the City's Traffic Engineer, and generally within a one-mile radius of the site, will be a level of service "D" or better following urban level development of the Annexation site.	Residential ¹		Applies
			Commercial/Industrial ²		Applies
			Open Space ³		
			Public Inst.		Applies
Truck Traffic Routes	Determination of truck traffic route(s).	Truck traffic associated with urban level development of the proposed Annexation will not result in primary travel routes on Local or Local Connector Streets through residential neighborhoods.	Residential ¹		
			Commercial/Industrial ²		Applies
			Open Space ³		
			Public Inst.		Applies
Livability indicators and benchmarks relating to the Corvallis Vision 2020 Statement category of "Education and Human Services"					
Local School Capacity / Travel Distance	Student enrollment, capacity, and average class size of public schools to serve the Annexation site. Distance to public elementary school.	Public schools that would serve the Annexation site are not overcrowded. Corvallis School District goals for average class sizes may vary among grades. 0.5-mile to public elementary school. School District policies, re: boundaries of closest schools or additional schools, factor into potential redefinition of school boundaries.	Residential ¹	Applies	Applies
			Commercial/Industrial ²		
			Open Space ³		
			Public Inst.		Applies
Police Response Time	Number of police officers per 1,000 persons residing within City limits.	At least 1.2 officers per 1,000 persons residing within City limits.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³		
			Public Inst.	Applies	Applies

LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
Distance from Fire Station	Distance from an existing fire station.	All buildable portions of the Annexation site are within 1.5 miles of a fire station with an engine company.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³		
			Public Inst.	Applies	Applies
Public Improvements	Type and extent of public improvements developed to City standards; and urban-level development, such as clustered housing, etc., existing on the proposed Annexation site.	Annexation of partially developed land within the Urban Growth Boundary (UGB) that already contains some public improvements developed to City standards, and urban-level development on part of the site, is considered more advantageous to the City than Annexation of undeveloped land.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies
Distance to Sewer and Water	Distance to adequately sized public sanitary sewer and water lines needed to serve the site.	Sanitary sewer and water facilities are proximate to the Annexation site. After some monitoring, distances for this benchmark may be specified in a future update of this Code.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³		
			Public Inst.	Applies	Applies
Planned Public Utilities	Types and extent of public utility improvements of sanitary sewer, water, and storm drainage, that are listed in City master plans, and would occur with urban-level development of the Annexation site.	It is considered an advantage if the installation of public utilities of sanitary sewer, water, and storm drainage, listed in City master plans, would enable other sites within the UGB to ultimately develop.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³	Applies	Applies
			Public Inst.	Applies	Applies

LIVABILITY INDICATORS	DESCRIPTION OF LIVABILITY INDICATORS	BENCHMARKS	LAND USE DESIGNATION	Minor Annex'n	Major Annex'n
Livability indicators and benchmarks relating to the Corvallis Vision 2020 Statement category of "Cultural Enrichment and Recreation"					
Distance to Parks	Distance from an existing public park.	Annexation site is within 0.5-mile of an existing public park.	Residential ¹	Applies	Applies
			Commercial/Industrial ²		
			Open Space ³		
			Public Inst.		Applies
Livability indicators and benchmarks relating to the Corvallis Vision 2020 Statement category of "Central City"					
Distance to Downtown	Distance of the Annexation from the Central Business Zone intersection of SW Third Street and SW Monroe Avenue.	It is considered an advantage if an Annexation site is within 3.8 miles from the intersection of SW Third Street and SW Monroe Avenue, within the boundaries of the Central Business Zone.	Residential ¹	Applies	Applies
			Commercial/Industrial ²	Applies	Applies
			Open Space ³		
			Public Inst.	Applies	Applies

1. Includes lands with a Comprehensive Plan Map designation of Low, Medium, Medium High, or High Density Residential; or Mixed Use Residential.
2. Includes lands with a Comprehensive Plan Map designation of Mixed Use Commercial, Professional Office, Central Business Zone, Limited Industrial, Limited Industrial-Office, Mixed Use Employment, General Industrial, Intensive Industrial, Mixed Use Transitional, or General Industrial - Office.
3. Includes lands with a Comprehensive Plan Map designation of Open Space-Conservation and Open Space-Agriculture.

2.6.30.08 - Action by the Planning Commission

The Planning Commission shall conduct a public hearing in accordance with Chapter 2.0 - Public Hearings to evaluate the proposed Annexation and determine its appropriate zoning designation upon Annexation.

Following the close of the public hearing, the Planning Commission shall establish the appropriate zone(s) upon Annexation and forward its recommendation concerning the Annexation to the City Council.

2.6.30.09 - Notice of Disposition

The Director shall provide the applicant with a Notice of Disposition in accordance with Chapter 2.0 - Public Hearings, that includes a written statement of the Planning Commission's decision regarding the zoning designation, a

reference to findings leading to it, and the appeal period deadline. The Notice of Disposition shall also include the Planning Commission's recommendation to the City Council regarding the Annexation. The Notice of Disposition shall also be mailed to persons who presented oral or written testimony at the public hearing.

2.6.30.10 - Appeals

The decision of the Planning Commission regarding the zoning designation may be appealed in accordance with Chapter 2.19 - Appeals. The Commission's recommendation regarding the Annexation is not a final decision.

2.6.30.11 - Effective Date of Zoning Designation

Unless an appeal has been filed, the decision of the Planning Commission regarding establishment of the zoning designation shall become effective 12 days after the Notice of Disposition is signed.

If the Annexation is not forwarded to the voters by the City Council, or the electorate does not approve the Annexation, then the newly established zoning designation shall become null and void.

2.6.30.12 - Action by the City Council

Upon receipt of the Planning Commission's recommendation the proposed Annexation shall be set for a public hearing before the City Council in accordance with Chapter 2.0 - Public Hearings. The Council shall review all proposals in time to comply with county or state deadlines for submitting measures to the voters in May or November. The Council shall set an Annexation for an election only when it finds that the Annexation is consistent with the review criteria in Sections 2.6.30.06 and 2.6.30.07.

Note: The City Council's decision to submit an Annexation to the electorate is the last discretionary decision in the process. Certifying the election after votes are counted is not a discretionary decision.

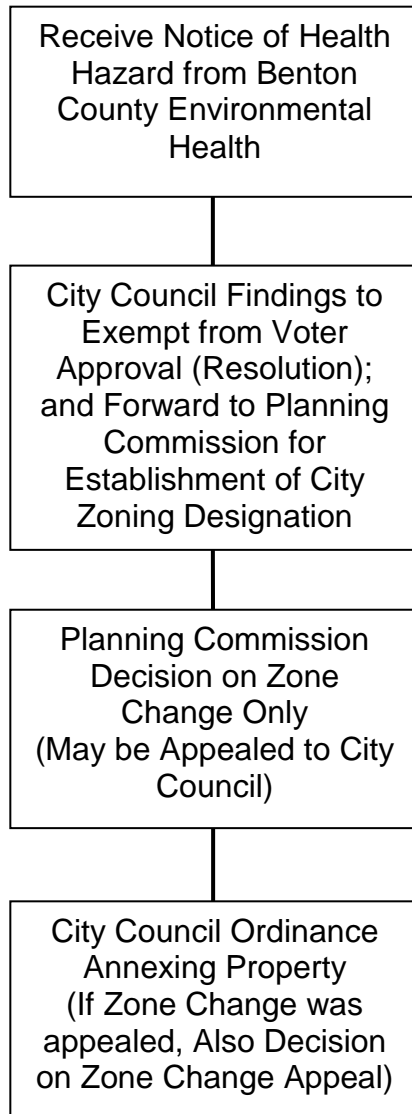
2.6.30.13 - Public Information

Public information for each Annexation scheduled for an election shall be reviewed by the Council and published in a newspaper of general circulation in the City at least 10 days before the election, and coordinated with the date that the ballots are mailed. The information shall include a summary of the key components and positive and negative effects of the Annexation that the Council used in deciding to place the Annexation request on the ballot. The information shall also state that staff reports are available from the Planning Division.

[Section 2.6.30 amended by Ordinances 2012-17 and 2012-18, effective December 13, 2012; Section 2.6.30 amended by Ordinance 2014-19, effective December 11, 2014]

Section 2.6.40 - EXCEPTIONS

The City Council may authorize an exception to the requirements of this Chapter involving filing fees and deadlines, and application requirements. An exception to these provisions shall require a favorable vote of the Council. Unless required by state law, the City Council shall not provide an exception to the requirement of voter approval.

Table 2.6 – 2: Annexations - Flow of Decisions**Health Hazard
Annexations****Annexation Requested by
Owner**