



CITY OF CANNON BEACH

AGENDA

To help minimize the spread of COVID-19, the City of Cannon Beach has issued an [Administrative Order](#). Effective August 27, 2021, all public access and participation for City Council, Commission, Board and Committee meetings will be virtual until further notice. Please visit the meeting page on our [website](#) for information on how to connect to Zoom or give public comment

Meeting: City Council Work Session
Date: Tuesday, September 14, 2021
Time: 6:00 p.m.
Location: Council Chambers, City Hall

CALL TO ORDER AND APPROVAL OF AGENDA

PUBLIC COMMENT

The Presiding Officer will call for statements from citizens regarding issues relating to the City. The Presiding Officer may limit the time permitted for presentations and may request that a spokesperson be selected for a group of persons wishing to speak.

DISCUSSIONS

- (1) Lifeguard & Parking-Information Aides End of the Season
- (2) New Municipal Judge Selection Committee
- (3) TSP Monthly Update
- (4) UGB & Annexation Discussion
- (5) CBE Construction Delivery Proposal
- (6) Concerns Regarding the Loss of Trees in the City
- (7) City Council Retreat and Goal Setting Planning
- (8) Good of the Order

ADJOURNMENT

To join from your computer, tablet or smartphone

Join Zoom Meeting

<https://zoom.us/j/99261084699?pwd=TkpjbGcxS0pCOGlMOctSbSsxVWFMZz09>

Meeting ID: 992 6108 4699

Password: 365593

To join from your phone:
Phone: 1.669.900.6833
Meeting ID: 992 6108 4699
Password: 365593

View Our Live Stream: View our [Live Stream](#) on YouTube!

Public Comment: If you wish to provide public comment via Zoom for this meeting, you must submit it by **noon**, the day of the meeting, to cityhall@ci.cannon-beach.or.us. Except for a public hearing agenda item, all Public to be Heard comments will be taken at the beginning of the meeting for both Agenda and Non-Agenda items. If you are requesting to speak during a public hearing agenda item, please indicate the specific agenda item number as your comments will be considered during the public hearing portion of the meeting when the public hearing item is considered by the Council. All written comments received by the deadline will be distributed to the City Council and the appropriate staff prior to the start of the meeting. These written comments will be included in the record copy of the meeting.

Please note that agenda items may not be considered in the exact order listed. For questions about the agenda, please contact the City of Cannon Beach at (503) 436.8052. The meeting is accessible to the disabled. If you need special accommodations to attend or participate in the meeting per the Americans with Disabilities Act (ADA), please contact the City Manager at (503) 436.8050. TTY (503) 436-8097. This information can be made in alternative format as needed for persons with disabilities.

Posted: 2021.09.10



CANNON BEACH CITY COUNCIL

STAFF REPORT

LIFEGUARD AND PARKING-INFORMATION AIDES END OF THE SEASON

Agenda Date: September 14, 2021

Prepared by: Jason Schermerhorn, Chief of Police

BACKGROUND

The Lifesaving program provides lifeguard coverage for the main beach areas associated with the City of Cannon Beach. The lifeguards provide a myriad of emergency and non-emergency services that are essential to maintaining safe and desirable recreational areas associated with the ocean shore. Lifeguards are on the beach daily from 11:00 am to 7:15 pm Mid-June through Labor Day. In May and September, they operate on weekends only, weather permitting.

Parking-Information Aides are employed from Memorial Day Weekend through Labor Day Weekend. Many of our aides are interested in a career in law enforcement. I started my career as a parking aide. Aides are a valuable resource and provide visitors with directions and information, advise drivers of parking regulations, issue parking violation warnings and citations, assist the police with investigations and emergencies, and assist the fire department with traffic control.

ANALYSIS/INFORMATION

Typically, at the beginning of the season we introduce the summer staff to council. Due to COVID we skipped it this year. This summer we have 9 lifeguards and 6 information aides. Of those 9 were people who returned from last year.

COVID did not slow down the town this summer. Parking tickets issued by the information aides from June 1st through August 31st increased by 323 over the same period in 2020. From a lifesaving standpoint, we started early with a tragedy which put everyone on high alert. There were 2 water rescues (4 victims), 15 water rescue preventions, 8 rescues that were called off or close calls, 17 first aid calls, and 23 assist fire or police. This does not include the numerous calls for lost & found, lift assist/courtesy or wildlife calls. To say these positions were busy this season would be an understatement.

RECOMMENDATION

Join me in thanking the lifeguards and information aides for their hard work and dedication. Their presence is a great asset to the police department and community.



CANNON BEACH CITY COUNCIL

STAFF REPORT

NEW MUNICIPAL JUDGE SELECTION COMMITTEE

Agenda Date: September 14, 2021

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

Ronald D. Woltjer has been the Municipal Judge for the City of Cannon Beach since 2013. Prior to this appointment Woltjer as the pro tem judge for Cannon Beach. Woltjer also served the Warrenton, Astoria and Seaside communities.

Judge Woltjer announced his resignation as Municipal Court Judge on July 14, 2021. Woltjer said it has been an honor to have service the citizens of Cannon Beach the past eight years. Ashley Flukinger entered into a contract with the City December 2020 as the prosecutor and pro tem judge. Flukinger has been in the judge pro tem since Woltjer's resignation.

ANALYSIS/INFORMATION

As part of the process of selecting Woltjer, Council appointed a selection committee to begin the interview process. The committee was comprised of the City Attorney, City Manager and one Councilor. Once the committee reaches a consensus on a candidate, Council will vote to appoint the candidate. Council will also vote to a Personal Services Agreement for the candidate.

RECOMMENDATION

Staff recommends that Council appoint a committee to select Judge Woltjer's replacement, and direct staff to proceed with the advertisement and interviews process for the position.

List of Attachments

- A Municipal Court Judge Recruitment Package

Advertisement for Municipal Court Judge

The Astorian

City website

Emailed Oregon Municipal Judges Association to see if they have a job board, didn't see one online.

LOC website

MUNICIPAL COURT JUDGE – Cannon Beach, Oregon

Population 1,700

Salary: Negotiable.

Position is responsible to provide Justice Court Services including the handling of traffic citations and all misdemeanor matters.

Qualifications include a working knowledge of the Oregon Vehicle Code, Rules and Ordinances and appropriate Court procedures.

For job description please visit ci.cannon-beach.or.us/jobs

The position is open until filled; the first review of applications will be October 5, 2021.

Send application, cover letter and resume to Jennifer Barrett, recorder@ci.cannon-beach.or.us

Equal Opportunity Employer.



CITY OF CANNON BEACH

Municipal Court Judge Job Description

The City of Cannon Beach is seeking a part time Municipal Court Judge. The position is appointed by the City Council and presides over municipal court sessions and functions as a magistrate to administer justice in the disposition of cases involving ordinance or statutory misdemeanor violations within the jurisdiction of Municipal Court. Applicants must have a minimum of five years of experience as a judge or licensed attorney in good standing in the State of Oregon. The applicant must have an effective working knowledge of the law within the jurisdiction of the court or demonstrated ability to learn the law and related judicial procedures. The applicant must have the ability to maintain judicial decorum in the proceedings of the Court, the ability to establish good working relationships and credibility with the general public consistent with the duties of the position, the ability to foster cooperation from persons of diverse social and economic backgrounds, and the ability to conduct affairs of the Court in a consistent, fair, and impartial manner.

- Admission to the Oregon Bar and a minimum of five years of experience in the practice of law and/or on the bench.
- Ability to relate to a highly diverse population in the general public, ranging from attorneys to lay citizens of all socio-economic status.
- Reliability, character, integrity, sound judgment, reputation, experience and efficiency.
- Ability to communicate clearly and concisely, orally and in writing.
- Ability to handle a high volume of cases, including motion hearings, trials to the court and jury trials.
- Good working knowledge of court procedure with emphasis on the municipal court rules.
- Ability to maintain a high level of decorum in the Municipal Court.
- Availability and adaptability of services to meet the needs of the City.
- Ability to develop and maintain an effective working relationship with the public, Court staff, other city departments and employees, elected officials and other public agencies.
- High performance quality in previous or current judge contracts, if any.
- Ability and record with regard to compliance with applicable laws and ordinances.
- Ability to maintain judicial impartiality and judicial temperament in cases.
- Leadership qualities necessary to enhance the public image and professional stature of the Municipal Court.

**City of Cannon Beach
Municipal Court Judge**

Interview Questions

January 8, 2013

1. What do you know about the City of Cannon Beach: the government and the community?
2. Why do you want to serve as the Municipal Court Judge for the City of Cannon Beach in particular?
3. What about your past legal experience and your inner makeup will make you an effective adjudicator?
4. How do you manage your court room? What type of court room environment do you foster? Would you characterize it as more formal or more casual and why? What type of image do you want portrayed by the court?
5. What is your overall philosophy in making decisions? Have you ever made a decision based on a law that you personally did not agree with? What were the circumstances? (ask for hypothetical situation)
6. Cannon Beach, a tourist community, experiences parking pressures. The city has attempted to place clear signage describing parking options, especially for RVs. How would you respond to out-of-town visitors writing to request reduction or cancellation of ticketed parking fines, based on their stating there was no other place to park?
7. How do you feel about giving defendants breaks when finances are an issue?
8. How do you feel about working for the Council of 5 elected individuals rather than for one person? If one Council Member had concerns about something that was happening in your court room but the other Council Members didn't seem to share this concern, how would you handle the situation?
9. How would you keep up with your continuing legal education specifically pertaining to your role as a Municipal Court Judge?
10. ~~Are you flexible to move the court from the current time of 2pm to 5pm?~~

AND

Would you be flexible to have two (2) court dates a month during the busier summer months?
11. Based on your Municipal Judge experience, what do you see as the most significant criminal activities threatening Northern Oregon coastal communities?
12. Cannon Beach currently sends all crimes to Circuit Court in Astoria. What would you think about bringing some of the criminal cases back to Cannon Beach for prosecution such as Thefts, Criminal Mischiefs and those sorts of property type crimes?
13. Why should the City of Cannon Beach hire you over all the other applicants?

**CITY OF CANNON BEACH, OREGON
PERSONAL SERVICES CONTRACT**

A CONTRACT (“Contract”) between THE CITY OF CANNON BEACH, OREGON (“City”), and **NAME** (“Provider”) entered into on _____ (“Effective Date”).

WHEREAS, the City and Provider believe it in their mutual interest to enter into a written contract setting out their understandings concerning Provider’s provision of services as the City’s Municipal Judge.

1. Term

The term of this Contract shall be effective from the date provided above and shall remain in full force and effect until **DATE**, unless terminated earlier under this Contract.

2. Provider’s Service

The scope of Provider’s services and time of performance under this Contract are set forth in Exhibit A. All provisions and covenants contained in Exhibit A are hereby incorporated by reference and shall become a part of this Contract as is fully set forth herein. Any conflict between this Contract and Provider’s proposal (if any) shall be resolved first in favor of this written Contract. Provider will, in the rendering of its services to City, use their best efforts and due diligence and provide such personnel as are necessary to successfully provide the services covered under this Contract and Exhibit A.

3. Provider Identification

Provider shall furnish to City Provider’s employer identification number, as designated by the Internal Revenue Service or Provider’s Social Security number.

4. Compensation

City agrees to pay Provider a rate of **\$RATE** for performance of services rendered as described in Exhibit A. Payment will be made based on Provider’s invoice, subject to the approval of the **Court Administrator**. Travel and other expenses shall not be reimbursed by the City.

5. Project Managers

City’s Project Manager is the City Manager. Provider’s Project Manager is **NAME**. Each party shall give the other written notification of any change in their respective Project Manager.

6. Project Information

No information, news or press releases related to the Provider's services as Pro Tem Municipal Court Judge shall be made to representatives of newspapers, magazines, television and radio stations or any other news medium without the prior authorization of City's Project Manager.

7. Duty to Inform

Provider shall give prompt written notice to City's Project Manager if, at any time during the performance of this Contract, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither contract with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of City's rights. The duty mandated by this section shall include a duty to inform the City of any lapse in Provider's membership in the Oregon State Bar as well as any pending or unresolved disciplinary matters related to Provider's license to practice law in this or any other state.

8. Extra or Changes in Work

Only the City Manager or Project Manager may authorize extra (and/or change) work. Failure of Provider to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Contract price or Contract time due to such unauthorized extra work and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such work.

9. Provider is Independent Contractor

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by the City or the provision of a defense by the City under the terms of ORS 30.285. This acknowledgment by Provider shall not affect their independent ability (or the ability of his insurer) to assert the monetary limitations found at ORS 30.270, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS30.300).

10. Compliance with State and Federal Laws/Rules

Provider shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers' compensation insurance, health care payments, payments to employees and subcontractors, income tax withholding contained in ORS

Chapters 279A, 279B and 279C, and the Oregon Rules of Professional Conduct, the provisions of which are hereby made a part of this Contract.

11 Indemnity and Insurance

- a) Indemnity: City has relied upon the professional ability and training of Provider as a material inducement to enter into this Contract. Provider warrants that all of their work will be performed consistent with commercially reasonable professional practices and standards, as well as with the requirements of applicable federal, state and local laws. Provider acknowledges responsibility for any and all liability arising out of the performance of this Contract and shall hold City, its officers, employees and agents harmless from and indemnify and defend City, its officers, employees and agents for any and all liability, settlements, loss, costs and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this contract.
- b) Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than Two Million dollars (\$2,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured
- c) Certificates: Provider shall furnish City certificates evidencing the date, amount, and type of insurance required by this contract. All policies will provide for not less than thirty (30) days' written notice to City before they may be canceled.
- d) Primary Coverage: The coverage provided by insurance required under this Contract shall be primary, and any other insurance carried by City shall be excess.
- e) Professional Liability: Provider shall maintain a professional liability insurance policy consistent with the requirements of the Oregon State Bar, with a minimum coverage of not less than \$300,000 to protect Provider from claims for professional acts, errors or omissions arising from the legal services it provides. This policy may be written on a "claims made" form. The policy shall contain an endorsement entitling City to not less than sixty (60) days prior written notice of any material change, non-renewal or cancellations of such policy.

12 Work is Property of City

All work, including but not limited to documents, drawings, papers, computer

programs, and photographs, performed or produced by Provider under this Contract shall be the property of City.

13 Law of Oregon

The Contract shall be governed by the laws of the State of Oregon. Venue shall be in Clatsop County, Oregon.

14 Successors and Assignments

- a. Each party binds itself, and any partner, successor, executor, administrator, or assign to this Contract.
- b. Neither City nor Provider shall assign or transfer their interest or obligation hereunder in this Contract without the written consent of the others. Provider must seek and obtain City's written consent before subcontracting any part of the work required of Provider under this Contract. Any assignment, transfer, or subcontract attempted in violation of this subparagraph shall be void.

15 Records

- a. Provider shall retain all books, documents, papers, and records that are directly pertinent to this Contract for at least three years after City makes final payment on this Contract and all other pending matters are closed.
- b. Provider shall allow City, or any of its authorized representatives, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

16 Breach of Contract

- a. Provider shall remedy any breach of this Contract within the shortest reasonable time after Provider first has actual notice of the breach or City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, City may terminate that part of the Contract affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this Contract.
- b. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, City may declare Provider in default and pursue any remedy available for a default.
- c. Pending a decision to terminate all or part of this Contract, City unilaterally may order Provider to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered

suspension of those services. If City suspends certain services under this Contract and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

- d. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Provider, including but not limited to, amounts owed under this or any other Contract between Provider and City.

17 Mediation/ Trial Without a Jury

- a. Should any dispute arise between the parties to this Contract it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.
- b. The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in **Portland, Oregon**, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clatsop County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

18 Termination for Convenience

The City may terminate all or part of this Contract at any time for its own convenience by written notice to Provider, effective immediately or at any time identified. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the Contract.

19 Intellectual Property

The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Contract shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to the City any data

or other tangible property generated by Provider under this Contract and necessary for the beneficial use of intellectual property covered by this paragraph.

20 Conflict of Interest

Except with City's prior written consent, Provider shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Provider's professional judgment with respect to this Contract, including, without limitation, concurrent employment in direct competition with the Contract.

21 Modification

Any modification of the provisions of this Contract shall be reduced to writing and signed by the parties.

22 No Waiver of Legal Rights

A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

23 Integration

This Contract contains the entire contract between the parties and supersedes all prior written or oral discussions or contracts regarding the same subject.

PROVIDER

CITY OF CANNON BEACH, OREGON

Name, Title

Date: _____

Date: _____

ATTEST:

EXHIBIT A

JOB DESCRIPTION – REFERENCE CHARTER AND CITY CODE

DRAFT



CANNON BEACH CITY COUNCIL

STAFF REPORT

TSP Update

Agenda Date: September 14, 2021

Prepared by: Jeff Adams, PhD
Community Development Director

BACKGROUND

Jeff Adams will provide an update on the TSP process. All information can be found on the TSP webpage at <https://www.cannonbeachtsp.com/>



CANNON BEACH CITY COUNCIL

STAFF REPORT

UGB & ANNEXATION WORK SESSION

Agenda Date: September 14th, 2021

Prepared by: Jeffrey S. Adams, PhD

INTRODUCTION

The City of Cannon Beach has been approached by two parties recently to discuss projects involving the expansion of the Urban Growth Boundary (UGB) and annexation. The City Land Use Attorney has provided the League of Oregon Cities' Oregon Municipal Handbook, which provides a summary of ORS, Chapter 222 and the procedures for boundary changes: mergers and consolidations, including annexations and urban growth boundary changes.

The City Land Use Attorney will lead a general discussion on these processes and the issues before the City when faced with annexation requests and UGB boundary amendments.

List of Attachments

A: Oregon Municipal Handbook: Nature of Cities, Chapter 1, published by the League of Oregon Cities, September 2020;

B: Oregon Revised Statutes, (ORS) Chapter 222.

Oregon Municipal Handbook

CHAPTER 1: NATURE OF CITIES

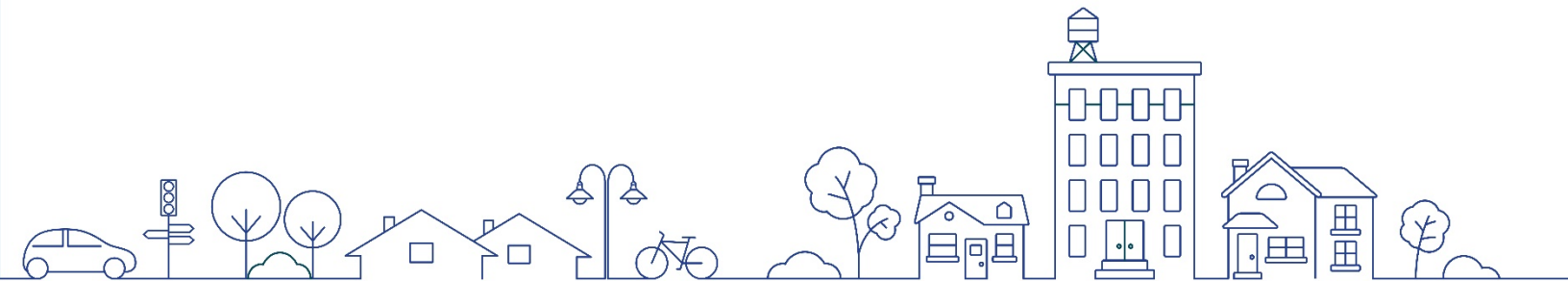


Table of Contents

I. Units of Local Government	4
A. Cities	5
i. Government Bodies	6
ii. Corporate Bodies	6
B. Counties	7
C. School Districts	8
D. Special Districts	9
E. Regional Governments	10
II. Forming a City	11
A. Filing a Proposed Petition	12
i. Additional Requirements	12
ii. Future Considerations	14
B. Signatures, County Review, and Election	17
i. Collecting Signatures	17
ii. County Approval.....	17
iii. Election	18
iv. Challenges.....	19
III. Boundary Changes	20
A. Minor Changes: Annexation and Withdrawal	20
i. Annexation.....	21
ii. Withdrawal.....	27
B. Major Changes: Merger, Consolidation, and Disincorporation	28
i. Merger.....	29
ii. Consolidation	31
iii. Disincorporation	36

Chapter 1: Nature of Cities

The purpose of all government, as noted by James Madison, is to provide its people with the opportunity to live in “safety and happiness.”¹ The provision of this safety and happiness is oftentimes most directly provided by local governments — from cities and counties to special purpose units, local governments in Oregon strive daily to meet the immediate needs of citizens.

Of course, local governments operate within a much broader governmental framework. Beyond each is an elaborate system of state and federal programs that serve communities too, just at a distance. These three tiers of government form a loose hierarchy of public service; it is divided horizontally — between executives, legislatures, and judiciaries — and also vertically.² Between the federal government and the state, this separation is known as federalism.³ Between the state and local governments, the separation is called home rule.⁴ When conflicts arise among these moving parts, they arise as part of a centuries-old tradition in this country.⁵ Dividing power *among* government units — not just within *a* government — is a longstanding feature of the United States.⁶ Together, these governments provide layers of elected officials who serve the needs and guard the interests of citizens.⁷

This chapter begins in Part I with a brief overview of local governments. In Oregon, local governments come in a wide variety. There are 36 counties, 241 cities, 197 school districts, and at least 7 regional governments.⁸ The most numerous are the 1,000 or so special districts that operate in communities across the state, providing essential services like surface water drainage, fire protection, sanitation, and domestic water supply.⁹ The chapter then turns the focus to cities, addressing (1) the process of forming a city and (2) how to change that form. Part II covers the

¹ THE FEDERALIST NO. 43 (James Madison).

² See Robert H. Thomas, *Sublimating Municipal Home Rule and Separation of Powers in Knick v. Township of Scott*, 47 FORDHAM URB. L.J. 509, 538-40 (2020) (noting the “vertical separation of powers” between federal, state, and local governments and that the “overwhelming” majority of states can be characterized as “Cooley rule” or “home rule” states, where “a locality’s law may be superior to conflicting state law.”).

³ See Brian Galligan, *Comparative Federalism*, in THE OXFORD HANDBOOK OF POLITICAL INSTITUTIONS 263 (Sarah A. Binder et al. eds., 2008).

⁴ Thomas, *supra* at 539.

⁵ Galligan, *supra* at 264.

⁶ *Id.* (noting that U.S. federalism was “a major innovation ... in institutional design [and] popular government.”).

⁷ *Id.*; see also Brian P. Keenan, *Subdivisions, Standing and the Supremacy Clause: Can A Political Subdivision Sue Its Parent State Under Federal Law?*, 103 MICH. L. REV. 1899, 1900 (2005) (noting that municipal governments “offer a miniature version of federalism on the state level, dividing the power of the state and placing many important decisions in the hands of representatives closer to the people.”).

⁸ *Local Government*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/local.aspx> (last accessed May 22, 2020).

⁹ See ORS 198.010.

incorporation process and Part III explores major and minor boundary changes, from annexation all the way through disincorporation.

I. UNITS OF LOCAL GOVERNMENT

Local governments owe their existence to state law, either in the Oregon Constitution or in provisions of the Oregon Revised Statutes (ORS).¹⁰ Unlike state governments, which possess a reservoir of authority that is separate from the federal government, local governments derive any and all their authority from the state government.¹¹ Legally, without these authorizations, local governments would not exist.

Local governments in Oregon are both government bodies and public corporations.¹² Beyond that, these governments fall into one of two basic categories: general purpose and special purpose units.¹³ General purpose units, namely cities and counties, possess general authority over matters that affect the well-being of the public within their jurisdiction.¹⁴ Special purpose units, by contrast, perform specific public functions and possess authority only in connection with that function.¹⁵ In Oregon, these units include the many special districts and school districts across the state.¹⁶ A third category, regional governments, includes one special district — the Metropolitan Service District (Metro) — and several councils of governments (COGs) that assist local governments in providing certain services.¹⁷

The Oregon Constitution prohibits the state Legislature from creating local governments by “special law,” meaning that the Oregon Legislature cannot create *single* governments.¹⁸ Under this provision, a municipal corporation means any “corporation as a form of organizing municipal authority and services....”¹⁹ Yet the constitution expressly authorizes the creation of municipal corporations by “general law,” or laws that apply generally to the entire state.²⁰ Accordingly, the Legislature has enacted many statewide processes for the formation of cities,

¹⁰ EUGENE MCQUILLIN, 1 THE LAW OF MUNICIPAL CORPORATIONS § 3:2 (3d ed.).

¹¹ *Id.*; see also US Const, Amend X.

¹² See *Blue v. City of Union*, 159 Or 5, 12-13 (1938).

¹³ MCQUILLIN, 1 THE LAW OF MUNICIPAL CORPORATIONS, § 2:33 (3d ed.).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ For the limited authority of school boards, see ORS 332.072. For that of special districts, see, e.g., ORS 261.305.

¹⁷ See ORS 198.010(6); *Regional Governments*, OREGON BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/local/other-regional.aspx> (last accessed May 22, 2020).

¹⁸ Or Const, Art XI, § 2.

¹⁹ *Id.*

²⁰ *Id.*

counties, and special districts.²¹ School districts, defined as “bodies corporate” and “local governments” under state law, exist as part of a statewide education system.”²²

The following is an overview of the local governments in Oregon today.

A. Cities

Cities possess general authority over local matters pursuant to the Oregon Constitution.²³ To exist in legal form, a city must first be incorporated.²⁴ Once incorporated, a city acts pursuant to a local charter, essentially a “city constitution.”²⁵ Cities may adopt a charter of their own or use terms provided under state law; currently, all 241 cities in Oregon have their own charters.²⁶ With a charter in place, cities govern through orders, resolutions, and ordinances adopted by a city council or commission. Cities administer policies through hired staff, the leader of which generally is a city manager or city administrator; although, in smaller cities, oftentimes the administration of a city is delegated to a city recorder or an appointed council member.

All cities are both government and corporate bodies.²⁷ As such, cities carry out functions that resemble both types of entities. The authority for cities to carry out these functions is limited in two fundamental ways. First, cities are restricted by the subject matter of their actions. This means that cities may perform government or corporate acts only if the acts address a matter of local concern, and only if the act is permitted under its own laws and state and federal law.²⁸ Second, cities are restricted by geography.²⁹ A city may exercise government authority only within that city’s boundaries, unless the state grants additional authority.³⁰ When it comes to corporate acts, however, cities are *not* restricted to the city’s boundaries.³¹

²¹ See generally ORS Ch 203, 201, and 198, respectively.

²² See generally ORS Ch 332; see also ORS 294.004(1).

²³ See generally Or Const, Art XI, § 2; see also Or Const, Art IV, § 1(5).

²⁴ See ORS 221.020.

²⁵ See *Brown v. City of Eugene*, 250 Or App 132, 136 (2012).

²⁶ See Or Const, Art. XI, § 2; see generally ORS 221.901 to 221.928.

²⁷ See *Blue v. City of Union*, 159 Or at 12-13 (1938) (noting that “municipal corporations act in a dual capacity and their functions are two-fold: The one, political and governmental, the other private, propriety, corporate.”).

²⁸ MCQUILLIN, 5 THE LAW OF MUNICIPAL CORPORATIONS, §§ 15:17, 15:19 (3d ed.).

²⁹ *State ex rel. Mullins v. Port of Astoria*, 79 Or 1, 17-20 (1916).

³⁰ *Id.*

³¹ See *DeFazio v. Wash. Pub. Power Supply Sys.*, 296 Or 550, 582 (1984).

i. Government Bodies

When a city seeks to regulate conduct or take coercive action through taxation, eminent domain, or otherwise, the city is acting in its government capacity.³² As general purpose units, cities are authorized to use government powers generally on all matters of local concern.³³

For the most part, a city may only exercise government powers within its boundaries, unless it is granted additional authority by the state.³⁴ A city's exercise of government authority within its boundaries is referred to as **intramural authority**.³⁵ Within its boundaries — and subject to conflicting state and federal law — a city may exercise its power on any matter of local concern and in any manner.³⁶ Many cities adopt local licensing or permitting programs on subjects like business and free speech activities.³⁷ They adopt ordinances proscribing nuisances and criminal behavior.³⁸ And they enforce laws in municipal court.³⁹ Intramural authority means general power to meet the public's needs. The limit is the city limit.

Beyond this intramural authority, every city possesses *some* power in areas outside its boundaries; this is known as **extramural authority**.⁴⁰ The key to understanding this power is knowing that it is a separate grant of authority under state law.⁴¹ When a city takes coercive action outside of its boundaries, it is not acting pursuant to its home rule authority under the Oregon Constitution; it is acting at the will of the Legislature or state voters.⁴² One example of extramural authority is annexation.⁴³ Grants of this authority must be “clearly expressed.”⁴⁴

ii. Corporate Bodies

Not every action a city takes is a use of government power. Many of the day-to-day actions taken by cities are instead corporate functions.⁴⁵ For instance, cities may enter contracts, buy and sell property, employ staff, and even conduct municipal enterprises. In this context, the

³² *Id.* (noting that a city cannot “assert *coercive authority* over persons or property outside its boundaries,” but that this restriction “has little relevance to a city’s contracts [or] consensual transactions.”).

³³ *Port of Astoria*, 79 Or at 18.

³⁴ *DeFazio*, 296 Or at 582.

³⁵ *Port of Astoria*, 79 Or at 17-20.

³⁶ *Id.*

³⁷ *See, e.g.*, SALEM, OR., CODE § 30.001 (2020); *see also* PORTLAND, OR. CODE § 31.40.010 (2020).

³⁸ *See, e.g.*, HERMISTON, OR. CODE §§ 130.01-130.31 (2000 & Supp. 2020).

³⁹ *See, e.g.*, BEND, OR., CHARTER Ch. 5, § 25 (1995).

⁴⁰ *Port of Astoria*, 79 Or at 17-20.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See* *Thurber v. McMinnville*, 63 Or 410, 414 (1912), *abrogated on other grounds by* *State ex rel. Heinig v. Milwaukie*, 231 Or 473 (1962).

⁴⁴ *See* *Richards et al. v. City of Portland et. al*, 121 Or 340, 345 (1927).

⁴⁵ *See* *Blue v. City of Union*, 159 Or 5, 12-13 (1938) (noting that “municipal corporations act in a dual capacity and their functions are two-fold: The one, political and governmental, the other private, propriety, corporate.”).

breakdown between intramural and extramural authority becomes far less relevant.⁴⁶ Oregon courts routinely recognize the right of cities to conduct these types of activities outside the local boundaries.⁴⁷ Generally, where a city is not exercising government power and is instead acting like any public corporation, no separate grant of authority under state law is required to carry out extraterritorial activities.⁴⁸

Even so, cities still must adhere to subject matter restrictions. Any action by a city must address a matter of local concern.⁴⁹ The action must also comply with its own laws, federal law, and state law.⁵⁰ As a general purpose corporation, a city can promote local interests through any reasonable contract, land sale, or enterprise that is in connection with a public need.⁵¹ Among the more notable actions taken by cities are a railroad, operated by the City of Prineville, and a telecommunications network, operated by the cities of Monmouth and Independence.⁵² A number of other cities provide utility services like electricity and water.⁵³

B. Counties

Like cities, counties are general purpose units with general authority over local matters.⁵⁴ The majority operate as “statutory home rule” counties under ORS Chapter 203.⁵⁵ Unlike cities, only a quarter of counties operate pursuant to home rule charters.⁵⁶ Most counties are governed by a board of commissioners, though some less populated counties are run by county courts.⁵⁷

All but three of Oregon’s 36 counties were formed before 1910, when Oregon voters approved Article XI, Section 2, of the Oregon Constitution and prohibited the creation of new counties by special acts of the Legislature.⁵⁸ In lieu of this, state law provides general procedures

⁴⁶ See *DeFazio v. Wash. Pub. Power Supply Sys.*, 296 Or 550, 582 (1984) (finding “the concept of ‘extramural power’” has little relevance to a city’s contracts or other consensual transactions in goods or services.”).

⁴⁷ *Id.*

⁴⁸ *Id.* (but noting that “exercise of eminent domain outside city limits would be an exercise of extramural power.”).

⁴⁹ See, e.g. *Churchill v. Grants Pass*, 70 Or 283, 288-89 (1914) (holding that a railroad, either “within the boundaries of such municipality or not,” must be for “the general welfare convenience, health, or comfort of its citizens.”).

⁵⁰ MCQUILLIN, 5 THE LAW OF MUNICIPAL CORPORATIONS, §§ 15:17, 15:19 (3d ed.).

⁵¹ See, e.g., *Churchill*, 70 Or at 288.

⁵² *Prineville Railway*, CITY OF PRINEVILLE, <https://www.cityofprineville.com/railway> (last accessed May 22, 2020);

About Us, MINET, <https://www.minetfiber.com/about> (last accessed May 22, 2020).

⁵³ *The Early Years: 1886-1920*, McMinnville Water & Light, <https://www.mc-power.com/about/history/early-years/> (last accessed May 22, 2020).

⁵⁴ See ORS 203.035 (providing that counties govern over all “matters of county concern”).

⁵⁵ See *GTE Northwest Inc. v. Or. Pub. Util. Com’n*, 179 Or App 46, 49 (2002).

⁵⁶ *County Government in Oregon*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/local/counties/about.aspx> (last accessed May 22, 2020).

⁵⁷ *Id.*

⁵⁸ *Oregon Counties*, ASS’N OF OREGON CTYS., <http://oregoncounties.org/counties/oregon-counties/> (see the accompanying interactive graphic) (last accessed May 22, 2020); see also Or Const Art XI, § 2.

for the creation of additional counties and boundary changes.⁵⁹ Jefferson and Deschutes Counties each were created through local elections in 1914 and 1916, respectively.⁶⁰

In several different capacities, Oregon’s counties serve as subdivisions of the state. Counties perform significant state-level functions; for instance, most counties operate as the local public health authority for its region, assisting the Oregon Health Authority to respond to public health concerns.⁶¹ Counties staff local offices of the Oregon Department of Corrections, the Oregon Youth Authority, and the Oregon Department of Veterans’ Affairs, and play an important role in assisting state officials to prepare for and respond to emergencies.⁶² Meanwhile, county district attorney’s offices prosecute all state crimes; while district attorneys are state officials whose salaries are paid for by the state, their staff are employed by counties.⁶³

Outside of these roles, counties function like cities in that they are general purpose units of government with the power to tax, take property, and regulate conduct for the health, safety, and well-being of its residents.⁶⁴ This authority extends only so far as the county boundaries.⁶⁵ Likewise, counties are public corporations with the power to form contracts, buy and sell property, and conduct enterprises that generally serve the interests of county residents.⁶⁶ A county’s authority is subject to state and federal law and any self-imposed local laws.⁶⁷

C. School Districts

School districts are unlike cities or counties in that they are a special purpose unit of government tasked with “educating children residing in the district,” as opposed to all general matters of local concern.⁶⁸ Article 8, Section 3, of the Oregon Constitution requires the state to create a statewide system of “Common schools,” and school districts are part of this system.⁶⁹

⁵⁹ See generally ORS Chapter 202.

⁶⁰ See *Barber v. Johnson*, 86 Or 390, 395 (1917); see also *State ex rel. Stadig v. Deschutes Cty.*, 88 Or 661, 662 (1918).

⁶¹ See ORS 431.405 to 431.550.

⁶² For the Oregon Department of Corrections, see ORS Ch 423; for the Oregon Youth Authority, see ORS Ch 420A; and for the Oregon Department of Veterans’ Affairs, see ORS Ch 406. More so than cities, counties also coordinate with the Oregon Office of Emergency Management through local agencies. See ORS 401.305 (providing that all counties “shall establish an emergency management agency,” while all cities or tribes “may ... establish...” agencies. (emphases added)).

⁶³ *Oregon’s 36 District Attorneys*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/state/executive/district-attorneys.aspx> (last accessed May 22, 2020); see also ORS 8.760.

⁶⁴ See 1000 Friends of Oregon v. Wasco Cty. Court, 304 Or 76, 82 (1987) (noting county is “general-purpose.”).

⁶⁵ See *GTE Northwest Inc. v. Oregon Public Utility Com’n*, 179 Or App 46, 59-62 (2002).

⁶⁶ *Id.* at 62 (upholding a county telecommunications service that operated outside the county’s boundaries because doing so served residents’ interests and because the county did not compel anyone outside its boundaries to use it.).

⁶⁷ MCQUILLIN, 5 THE LAW OF MUNICIPAL CORPORATIONS, §§ 15:17, 15:19 (3d ed.).

⁶⁸ See ORS 332.072.

⁶⁹ Or Const, Art VIII, § 3.

Furthermore, school districts are not governed by local charters and cannot be formed through citizen initiatives (though residents may petition for mergers or boundary changes).⁷⁰ The number, size, and boundaries of school districts are decided instead by district boundary boards, a role performed by counties on behalf of the state.⁷¹ The duties and powers of school districts are all prescribed by state laws and regulations.⁷² Thus, in some ways, school districts function less like municipal corporations and more like state agencies.

School districts are local governments in other ways, however. First, the governing body is elected. Every school district is governed by a district school board, which are public bodies composed of volunteer elected officials who serve four-year terms and reside and vote in the district.⁷³ Second, school districts possess important government powers like the power to levy taxes, the power to seize property, and the power to regulate activities on district property.⁷⁴ Third, school districts are “bodies corporate” with the power to buy or sell property, take out loans, enter into contracts, and “transact all business coming within the jurisdiction of the district.”⁷⁵

D. Special Districts

More numerous than school districts are the hundreds of special districts serving communities across the state. These districts are governed generally by ORS Chapter 198 but also by their “principal acts,” which are spread across two dozen or so other ORS chapters.⁷⁶ Special districts include, for instance, a people’s utility district under ORS Chapter 261; a domestic water supply district under ORS Chapter 264; a port district under ORS Chapter 777; and county service districts under ORS Chapter 451.⁷⁷ Other districts relate to mass transit; irrigation; regional air quality control; fire protection; hospitals; sanitation; cemeteries; parks and recreation; special roads and road assessments; highway lighting; health; vector control; water improvement; weather modification; geothermal heating; transportation; chemical control; weed control; emergency communications; diking; and soil and water conservation.

Everything about special districts — from how they are structured to what powers they have — depends on the interplay between ORS Chapter 198 and their principal acts, i.e., the laws that authorize their existence. A good example of this is how special districts are formed.

⁷⁰ See ORS 330.092 to ORS 330.095.

⁷¹ See ORS 330.080.

⁷² See generally ORS Ch 332.

⁷³ ORS 332.018.

⁷⁴ See ORS 328.213; see also ORS 332.182; see also ORS 332.445.

⁷⁵ ORS 332.072.

⁷⁶ See generally ORS Chapter 198.

⁷⁷ ORS 198.010. Note that county service districts are unique in that they are not wholly independent from the county that operates them. ORS 451.485.

Generally, citizens petition to form special districts under a process defined by statute.⁷⁸ For some districts, that process is found under the District Boundary Procedure Act.⁷⁹ Yet for others, formation and modification are issues controlled by the district’s principal act.⁸⁰ Similarly, ORS Chapter 198 provides processes for filling vacancies on a district’s governing body, compensating officials, and adopting ordinances and other regulations; each of these processes applies to a different subset of special districts.⁸¹

Like school districts, special districts are special purpose units of government that are formed for a particular need or service.⁸² Generally, a special district possesses taxing and regulatory power if it acts within its boundaries and within the grant of authority in its principal act or in ORS Chapter 198.⁸³ Unlike school districts, special districts are funded more by local taxes than by state revenue. Special districts also are public corporations and may enter contracts, buy or sell property, and transact other business as long as every action is related to its limited municipal function.⁸⁴

E. Regional Governments

Finally, city officials may from time to time encounter what are commonly known as regional governments. The most established of these is Metro, which is authorized under ORS Chapter 268 and is classified as a special district government.⁸⁵ Metro operates under a charter based in Article XI, Section 14, of the Constitution and has jurisdiction over all “matters of metropolitan concern” as described in the district’s charter.⁸⁶ In and around Portland, Metro coordinates urban development and transportation, and operates a regional waste system.⁸⁷

Outside of Metro, there are several other regional councils of government (COGs).⁸⁸ These councils are more aptly described as government groups than as governments in their own right. COGs are formed through intergovernmental agreements under ORS Chapter 190; in this

⁷⁸ See, e.g., ORS 198.748.

⁷⁹ *Id.*

⁸⁰ See, e.g., ORS 261.105

⁸¹ See generally ORS Chapter 198.

⁸² See, e.g., ORS 261.305. The enumerated powers of people’s utility districts, which generally relate to providing and distributing “a supply of water[,] ... waterpower and electric energy, or electric energy generated from any utility.” *Id.*

⁸³ *Id.*

⁸⁴ See, e.g., ORS 261.215 (declaring the corporate status of people’s utility districts and authorizing the use of certain “corporate powers” enumerated in the act.).

⁸⁵ See generally ORS Chapter 268; see also ORS 198.010(6).

⁸⁶ Or Const, Art XI, § 14; OR. METRO CHARTER Ch. 2, § 4 (2015), <https://www.oregonmetro.gov/sites/default/files/2015/01/12/Metro%20Charter%202015.pdf> (last accessed June 9, 2020).

⁸⁷ *Regional Leadership*, METRO, <https://www.oregonmetro.gov/regional-leadership/what-metro> (last accessed June 2, 2020).

⁸⁸ *Regional Governments*, OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/local/other-regional.aspx> (last accessed May 22, 2020).

way, they are identical to the League of Oregon Cities (LOC).⁸⁹ Unlike the LOC and in a manner similar to Metro, COGs work with cities and other local governments to provide regional public services. Examples include business loan programs, economic development, senior and disability services, and regional planning.⁹⁰ COGs enable governments to take on programs or projects that otherwise might be too costly or complex.⁹¹ While COGs might contract with local governments to provide services, they are not municipalities; as such, they possess no coercive authority — taxing, regulations, etc. — and may only provide services that its member governments are authorized to provide.⁹² COGs operate through boards of elected officials selected from its member governments and derive revenue through dues and fee-for-service agreements.⁹³

II. FORMING A CITY

Throughout history, and in theory, three methods of incorporation have been available to Oregon communities looking to incorporate as cities. Among them, one method is barred by the Oregon Constitution and another has never been attempted — only contemplated.⁹⁴ This leaves the statutory procedure under the Oregon Incorporation Act of 1893, codified at ORS 221.010 to ORS 221.110, which will be the focus here.

The Incorporation Act carries two threshold requirements. First, at least 150 people must reside in the proposed area.⁹⁵ Second, the area cannot be within “an incorporated city.”⁹⁶ The general requirements of incorporation fall into four categories: (1) filing a proposed petition, (2) conducting a petition drive, (3) obtaining county approval, and (4) succeeding in an election. The exact requirements differ depending on the community’s proximity to existing cities and whether the area is located in a populous county. Finally, incorporation triggers other legal requirements that demand the attention of the new city; petitioners should be aware of these prior to filing the petition. The following paragraphs explore the major categories and concerns of incorporation.

⁸⁹ OR. CHAPTER OF THE AM. PLAN. ASS’N, REGIONAL PLANNING FOR THE 21ST CENTURY 15-17 (2010), <http://www.oregonapa.org/wp-content/uploads/2015/05/OAPA-Final-Reg-ES-Jan11.pdf> (last accessed June 2, 2020).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Or Const, Art XI, § 2, prohibits the state from incorporating cities by special act. The provision also grants “cities” the power to adopt a home rule charter. Arguably, an unincorporated community becomes a city through the process of drafting and adopting a home rule charter; if so, communities could simply adopt a charter and skip the process of becoming a city under state law. For more analysis, see LEAGUE OF OR. CITIES, INCORPORATING A CITY IN OREGON (2019), <https://www.orcities.org/application/files/6815/7904/8842/IncorporationWhitePaperUpdated2-2-19.pdf> (last accessed June 2, 2020).

⁹⁵ ORS 221.020.

⁹⁶ *Id.*, The Incorporation Act does not define the term “incorporated city.” State regulations acknowledge the possibility for communities within the urban growth boundary of a city to incorporate; See OAR 660-014-0010(1).

A. Filing a Proposed Petition

The process of incorporating a city begins by filing a **prospective petition** and an **economic feasibility statement** with the county clerk.⁹⁷ The prospective petition is a form prescribed by the Oregon Secretary of State and requires the name of the city, the names and addresses of no more than three chief petitioners, and the proposed permanent tax rate for the city.⁹⁸ A **map** that shows the boundaries of the proposed city must be attached to the form.⁹⁹

The economic feasibility statement requires considerably more work by the community. It details the services and functions of the proposed city, the relationship of those services to existing public services in the area, and the first and third-year budgets of the prospective city that prove “economic feasibility.”¹⁰⁰ Generally, a community’s ability to provide this statement results from a broader feasibility study that addresses the economic characteristics of the area and the tax rate and boundaries of existing taxing districts, among other issues. For information on how to conduct a feasibility study, consult the LOC City Incorporation Guide (2017).¹⁰¹

Once the chief petitioners file the prospective petition and economic feasibility statement with the county clerk, the clerk authorizes the circulation of the petition and sends two copies to the board of commissioners for the county.

i. Additional Requirements

The initial filing must comply with several other provisions in addition to these basic requirements. As a rule of thumb, areas that fall just outside an existing city generally face stricter requirements for incorporation than more isolated areas. One example of this is rural unincorporated communities, which are subject to a much more rigorous filing process. Another

Petition for Incorporation in a Non-Urbanized Area

A Petition for Incorporation must include:

- Name and residence of no more than 3 persons who are to be the chief petitioners;
- Name of the proposed city;
- Proposed permanent rate limit for operating taxes, expressed in dollars per thousand dollars of assessed value;
- A map indicating the exterior boundaries of the proposed city (not to exceed 14 inches by 17 inches); and
- If the proposed city is to be located in a jurisdiction governed by a local government boundary commission, the Petition must further include the economic feasibility analysis required by ORS 199.476(1).

The Petition must also comply with land use regulations. If the area to be incorporated encompasses a special district/s, it should state whether it proposes to extinguish the special district/s.

⁹⁷ ORS 221.031.

⁹⁸ See Form SEL 701, <https://sos.oregon.gov/elections/Documents/SEL701.pdf> (last accessed May 22, 2020).

⁹⁹ ORS 221.031(3)(d).

¹⁰⁰ ORS 221.035.

¹⁰¹ LEAGUE OF OR. CITIES, INCORPORATION GUIDE (2017), <https://www.orcities.org/application/files/5515/6116/0245/IncorporationGuideUpdate6-23-17.pdf> (last accessed May 22, 2020).

example is areas within an urban growth boundary (UGB), which must comply with the existing city's local comprehensive plan. That said, planning laws apply to all incorporation petitions, not just those within a UGB; for areas not within a UGB, the petition must comply with statewide planning goals. Finally, if the proposed area falls within the jurisdiction of a local government boundary commission, then other filing requirements exist.

a. Urbanized Areas

Additional requirements exist for communities in “urbanized areas,” or areas that are outside UGB but within three miles of a city.¹⁰² To be incorporated, these areas must be within a previously designated “rural unincorporated community,” and the lands bordering the proposed city must be subject to use exemptions for agriculture or forestland.¹⁰³ For qualifying communities, the initial filing must include a separate **affidavit** and a **detailed economic feasibility statement**.¹⁰⁴

The affidavit must be filed by a chief petitioner vowing that at least 10% of the registered electors already support incorporation and that discussions have taken place with each neighboring city “concerning the effects of the proposed incorporation.”¹⁰⁵ These discussions are important because a city may later petition the county to reject the proposal if it finds the incorporation would adversely impact its interests.¹⁰⁶

The economic feasibility statement, meanwhile, must contain at least three additional pieces of information. First, the statement must commit the proposed city to providing urban services in a manner that is both cost-efficient and adequate for current and future needs. Second, the statement must contain a proposed permanent rate limit for operating taxes. Third, the statement must commit the proposed city to planning for residential development at or above the same urban density planned for an already existing city located in the county. This comparison city must have a similar geographic area within the urban growth boundary.¹⁰⁷

In some cases, a proposed city must also “demonstrate” that it can meet these standards by completing a public facility plan and a transportation system plan.¹⁰⁸ If so, petitioners may satisfy the standards by entering into service agreements with other cities or districts.¹⁰⁹

¹⁰² ORS 221.034(2).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ ORS 221.034(3).

¹⁰⁷ ORS 221.034(2).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

b. Land Use Regulations

Under Oregon law, the incorporation of any city results in a land use decision that is subject to statewide planning regulations. Specifically, the county order approving an incorporation petition as an election ballot measure is a “land use decision [that] must comply with applicable Statewide Planning Goals.”¹¹⁰ Or, if the area proposed for incorporation is within the urban growth boundary of a city, then the incorporation proposed by the petitioners must also comply with local planning regulations, i.e., the existing city’s local comprehensive plan, that is required by state land use laws.¹¹¹ Failure to comply with the relevant land use rules can lead to legal disputes with interested parties in the Oregon Land Use Board of Appeals.¹¹² For these reasons, communities must be aware of land use laws before seeking incorporation.

c. Local Government Boundary Commissions

A local government boundary commission is a commission with authority to review major or minor boundary changes, including incorporation.¹¹³ Counties are authorized to create these commissions, which technically are state agencies, under ORS Chapter 199.¹¹⁴ In counties where a local boundary commission has jurisdiction, the chief petitioners must include with the initial filing the **economic feasibility analysis** and **estimated tax rate** required under ORS 199.476.¹¹⁵ The information must then be reviewed and approved by the local government boundary commission before the county clerk can authorize the petition for circulation.¹¹⁶

ii. Future Considerations

Before filing a petition for incorporation, several other considerations warrant the attention of petitioners. Unlike the items above, these are not legal prerequisites to filing a petition, but they are concerns that carry severe consequences if not addressed early in the incorporation process. First, a new city in a county of more than 100,000 people must provide four major services within three years of incorporation to receive crucial state shared revenue. Second, and somewhat related, is the relationship that a new city has with existing — often overlapping — special districts. Third, all new cities must comply with local budgeting laws. Fourth, returning to the subject of land use law, all new cities must prepare local land use rules

¹¹⁰ OAR 660-014-0010(2)(a).

¹¹¹ OAR 660-014-0010(2)(c). Once incorporated, a city develops its own local comprehensive plan for the area; *See* ORS 197.757.

¹¹² ORS 197.825.

¹¹³ ORS 199.415(11). Incorporation is a “major boundary change,” as is merger, consolidation, and disincorporation.

¹¹⁴ ORS 199.430.

¹¹⁵ ORS 221.031.

¹¹⁶ *Id.*

within four years of incorporation. A full list of considerations is available in the LOC's City Incorporation Guide.¹¹⁷

a. Areas Within a County of More than 100,000 People

Beginning with its fourth year, a city in a county with more than 100,000 people must provide at least four of the following services to continue to be eligible for state shared revenues: police protection; fire protection; street construction, maintenance and lighting; sanitary sewers; storm sewers; planning, zoning and subdivision control; one or more utility services.¹¹⁸ Nothing is required at the time of incorporation, but communities should be aware of this requirement and factor it into the feasibility study. Some of these services might already be provided by a local special district, which underscores the importance of the next subsection.

b. Special Districts

Unlike some cities, neighboring or overlapping special districts are not legally entitled to receive any consultation from a community seeking to incorporate. Consulting special districts is a practical requirement, however, to avoid future complications and promote cooperation among local governments. For the following reasons, filing the incorporation petition is a crucial opportunity for a community to establish a working relationship with special districts in its area.

First, incorporating an area that includes a special district may have immediate legal consequences. If the entire area of a district is within the boundaries of a new city, then that district will cease to exist and the new city will assume the assets, liabilities, obligations and functions of the district.¹¹⁹ Such a district may continue to exist and operate within the city's boundaries, but only if this arrangement is proposed in the petition to voters.¹²⁰ Given that terminating a district may be undesirable for the district or the new city, and that this outcome is avoidable with the proper preparations, early communication is encouraged between petitioners and districts.

Conversely, if the city only partially overlaps with a district's boundaries, then that district continues to operate in the area if and until the city completes a separate process to withdraw the district from the area.¹²¹ This process includes notice and meeting requirements; anticipating these requirements will mean for a smoother transition for the city and district.¹²²

¹¹⁷ LEAGUE OF OREGON CITIES, INCORPORATION GUIDE (2017), <https://www.orcities.org/application/files/5515/6116/0245/IncorporationGuideUpdate6-23-17.pdf> (last accessed June 15, 2020).

¹¹⁸ ORS 221.760.

¹¹⁹ ORS 222.510.

¹²⁰ *Id.*

¹²¹ ORS 222.520.

¹²² ORS 222.524; ORS 222.460(2).

Second, all new cities must enter into coordination agreements with each special district that provides an urban service within its urban growth boundary.¹²³ For purposes of this planning requirement, “urban services” means sanitary sewers, water, fire protection, parks, open space, recreation, streets, roads, and mass transit.¹²⁴ New cities must enter into these coordination agreements before the second periodic review of the city’s comprehensive plan.¹²⁵

Finally, proposed incorporations of cities within the boundaries of the Metro, a regional government and special district, may face additional requirements.

c. Budgeting Laws

ORS Chapter 294 provides a stringent set of budgeting laws for local governments. Beginning in most instances with the fiscal year following incorporation, the expenditure of any money by a city, even in its first months of existence, must be made pursuant to a legal budget.¹²⁶ While the economic feasibility statement required for an incorporation petition will outline *proposed* budgets for the first and third years of city operations, the budgets still must be approved by the new city’s council. The process of approving a budget involves a series of committee, notice, and meeting requirements. Petitioners should know of these requirements and may refer to the Oregon Property Tax Division’s “Local Budgeting Manual.”

d. Comprehensive Planning

As noted above, compliance with state land use regulations begins with the incorporation petition, but it does not end there. Upon incorporation, cities acquire a responsibility to develop their own land use rules through a local comprehensive plan.

ORS Chapters 197 and 227 govern the new city’s land use planning responsibilities. Within four full years of its existence, a new city must prepare, adopt, and gain state approval of a comprehensive plan consistent with the statewide goals adopted by the Oregon Land Conservation and Development Commission (LCDC).¹²⁷ LCDC administrative rules apply the statewide goals to incorporation and require adoption of a comprehensive plan for the new city.¹²⁸ The plan must be coordinated with the county and acknowledged by the LCDC before it is official. The typical plan contains a map indicating preferred land uses, a series of goals and policies defining those uses, and references to the data on which the plan is based.

¹²³ ORS 195.020.

¹²⁴ ORS 195.065.

¹²⁵ ORS 195.085.

¹²⁶ ORS 294.338(1), (10).

¹²⁷ ORS 197.757; ORS 197.251.

¹²⁸ (OAR, Chapter 660, Division 14).

B. Signatures, County Review, and Election

The incorporation process moves quickly following the filing of the proposed petition and the required supporting documents. Upon receiving all of the necessary paperwork, the clerk for the county will immediately file the petition and “authorize the circulation of the petition.”¹²⁹ Petitioners for incorporation then face four additional hurdles: (1) collecting enough signatures; (2) obtaining county approval for the incorporation; (3) winning in the election; and finally (4) withstanding challenges filed against the incorporation, if any.¹³⁰

i. Collecting Signatures

The Incorporation Act requires the petition to be signed by at least 20% of the eligible voters in the area proposed to be incorporated, or only 10% if the area is within a county of more than 300,000 people.¹³¹ At present, there are five such counties: Clackamas, Lane, Marion, Multnomah, and Washington counties.¹³² These signatures must be gathered within six months of filing the proposed petition or else they will not count.¹³³ In addition, the signatures must be collected on a sheet prescribed by the secretary of state and each sheet must be accompanied by a full and correct copy of the petition for incorporation.¹³⁴ Once all of the needed signatures have been collected, the petitioners return to the county to file the petition and signatures with the county court or the county board of commissioners.¹³⁵

ii. County Approval

Upon receiving the petition, the county’s governing body sets a time and place for a hearing on the petition and delivers notice through publications and public places.¹³⁶ This hearing serves two purposes. First, it provides an opportunity for interested parties to appear and present objections to the incorporation or the proposed tax rate. Second, the governing body must determine that all property within the proposed boundaries would be “benefited” by the city.¹³⁷

The standard for determining whether an area would be “benefited” by incorporation is not clearly set by statute.¹³⁸ The Oregon Supreme Court has described the “ambiguity regarding the powers vested in the county” in this hearing.¹³⁹ That said, a few rules are clear. First, the county may, but is not required, to expand the boundaries of the proposed city to include areas it

¹²⁹ ORS 221.031(2).

¹³⁰ See ORS 221.031(4); ORS 221.040; ORS 221.050.

¹³¹ ORS 221.040(1).

¹³² *County Populations*. OR. BLUE BOOK, <https://sos.oregon.gov/blue-book/Pages/local/county-population.aspx> (Last Accessed June 10, 2020).

¹³³ ORS 221.040(1).

¹³⁴ See Form SEL 702 <https://sos.oregon.gov/elections/Documents/SEL702.pdf> (last accessed May 22, 2020); see also ORS 221.031(4).

¹³⁵ ORS 221.040(1).

¹³⁶ *Id.*

¹³⁷ ORS 221.040(2).

¹³⁸ See *McManus v. Skoko*, 255 Or 374, 378 (1970).

¹³⁹ *Id.*

finds would be benefited by the new city.¹⁴⁰ However, the county *must* limit the boundaries of the new city to exclude property owners who would *not* be benefited. Second, the Supreme Court held in *McManus v. Skoko* that the county cannot go so far as to find no property would be benefited by a proposed incorporation, thereby rejecting any possibility of incorporation for the community.¹⁴¹ The *McManus* Court found that the purpose of the hearing is to alter boundaries, not to reject incorporation.¹⁴² Third, any ruling by the county in this hearing is a quasi-judicial decision, not a legislative decision.¹⁴³ As such, the county's governing body is serving as an impartial decision-maker rather than as a political body; the county must make its decision based on evidence, and the petitioners are entitled to certain due process rights in the proceeding.¹⁴⁴

Despite the *McManus* ruling, there remains one way that a county can reject a petition for incorporation. If the proposed area is a rural unincorporated community and a neighboring city objects to the incorporation, then the county has clear grounds to deny the incorporation effort.¹⁴⁵ If it does, then it must clearly acknowledge this as the reason in its findings and the decision may be appealed to the Land Use Board of Appeals (LUBA).¹⁴⁶

Conversely, a county order *approving* the incorporation petition for an election may also be appealed to LUBA. As noted above, this order qualifies as a land use decision and therefore is subject to LUBA appeal.¹⁴⁷ Successful appeals will invalidate the outcome of the election.¹⁴⁸

iii. Election

The county's governing body, upon approving the petition in its original or altered form, must issue an order for an election to be held on the matter of incorporation. The election must be held at least 90 days after the issuance of the order.¹⁴⁹

In the election, eligible voters within the boundaries of the proposed city are presented with two questions. First, voters must decide if the proposed city should be incorporated or not. Second, if so, the voters must select candidates who will serve on the inaugural city council.

The vote on incorporation carries a unique threshold requirement. To succeed, the vote on incorporation must show that a majority of the votes approve of the idea and that at least 50% of the registered voters in the area participated in the election. But this requirement is waived if

¹⁴⁰ ORS 221.040(2).

¹⁴¹ *McManus*, 255 Or at 378-80.

¹⁴² *Id.*

¹⁴³ See 1000 Friends of Oregon v. Wasco Cty Court, 304 Or 76, 80 (1987) (citing criteria in *Strawberry Hill 4 Wheelers v. Benton Bounty Bd. of Comm.*, 287 Or 591, 593 (1979)).

¹⁴⁴ *Id.*

¹⁴⁵ ORS 221.034(3).

¹⁴⁶ ORS 221.034(5).

¹⁴⁷ *1000 Friends of Oregon*, 304 Or at 78.

¹⁴⁸ *Id.*

¹⁴⁹ ORS 221.040(3).

the vote on incorporation is held in May or November of any year.¹⁵⁰ If the electorate votes for incorporation of the new city, then the date of incorporation is the date of the election and the costs of the election come out of the general fund of the new city. If the electorate votes down the idea, then all expenses of the election are paid out of the general fund of the county.¹⁵¹

The vote on council candidates must result in the election of five council members. Under the Incorporation Act, a city council is a five-person body. To be on the ballot, candidates must file a declaration of candidacy with at least 25 signatures of eligible voters in the area, or else just 10% of the voters in the area if that number is less than 25 people.¹⁵² Of the candidates, the two that receive the highest number of votes will hold office until the second general election following incorporation; the remaining three will hold office until the next general election.¹⁵³

Newly incorporated cities operate, at least initially, pursuant to a government structure under the Incorporation Act.¹⁵⁴ This law governs the city's politics unless or until the city supersedes it with the creation of a home rule charter. At present, all 241 incorporated cities in Oregon operate under charters enacted under Article XI, Section 3, of the state constitution. More information on how cities can be structured is available in Chapter II.

iv. Challenges

In the event the incorporation of a city is challenged within two years of incorporation, as an improper land use decision or otherwise, state law provides a process for how shared revenue is to be distributed. If the respective court or state agency determines that the incorporation was invalid, moneys that would have otherwise been payable to the city as state shared revenue — such as tax revenue from cigarette, liquor, and marijuana laws and street and highway funds — are instead deposited with the State Treasurer, with the State Treasurer placing these monies in an escrow account. If the new city successfully appeals the decision, then the funds ultimately are

ELECTION OF FIRST CITY COUNCIL

nomination of city council candidates.

- 2) Notwithstanding ORS 249.037, nominating petitions and declarations of candidacy shall be filed with the County Clerk no sooner than the 100th day and no later than the 70th day before the date of the election.
- 3) At the time of a candidacy declaration, a filing fee of \$25 is to be paid.
- 4) Nominating petitions must contain at least 25 signatures of electors in the proposed area for incorporation or 10% of the electors, whichever is less.

¹⁵⁰ ORS 221.050(4)-(5).

¹⁵¹ ORS 221.061(2).

¹⁵² ORS 221.050(2).

¹⁵³ ORS 221.090(1).

¹⁵⁴ ORS 221.110.

distributed to the city. If the new city fails to appeal or fails in its appeal, then the city's state shared revenue is instead distributed to all cities throughout the state based on population.¹⁵⁵

Theoretically, another challenge to incorporation might come in the form of a nearby city or special district attempting to annex parts of the area before incorporation can take place. This would not be a direct challenge to incorporation but rather a preemptive one. State law addresses this and forbids any attempts at annexation during the pendency of an incorporation petition. As soon as petitioners complete their initial filing of a prospective petition, no city or district may commence annexation proceedings until the petition is rejected by the county or by voters.¹⁵⁶

III. BOUNDARY CHANGES

Once a city is incorporated, different state laws govern how the nature of a city can be altered through annexation, withdrawal, merger, consolidation, or disincorporation. On these topics, cities may be subject to local laws as well, like an ordinance or a home rule charter. Cities need to be aware of their own laws before attempting any of these processes. The following section is limited to state law requirements and reviews the five boundary changes that a city may undergo. Two of them — annexation and withdrawal — modify a city's existing boundaries and are considered “minor” boundary changes.¹⁵⁷ The remaining three — merger, consolidation, and disincorporation — are “major” boundary changes that dissolve a city (or cities) as part of their respective processes.¹⁵⁸

Note that some of these changes require involvement of a local government boundary commission, if a city is subject to one's jurisdiction. Prior to acting in any of the following ways, a city should confirm whether a commission operates in its area. Also, Metro has jurisdiction over boundary changes within its district.¹⁵⁹

A. Minor Changes: Annexation and Withdrawal

Both annexation and withdrawal modify an existing city's boundaries. Annexation is the process of extending city boundaries. The opposite action, withdrawal, retracts city boundaries by removing territory from the city. These processes are similar in effect, but also different in one fundamental way. A city's power to annex territory is an exercise of extramural authority that flows entirely from state law, not a home rule charter.¹⁶⁰ A city's right of withdrawal,

¹⁵⁵ ORS 221.785.

¹⁵⁶ ORS 221.032.

¹⁵⁷ ORS 199.415(12).

¹⁵⁸ ORS 199.415(11).

¹⁵⁹ ORS 268.347(1).

¹⁶⁰ See *Schmidt v. City of Cornelius*, 211 Or 505, 517 (1957). The LOC maintains that the decision to annex is an expression of intramural authority. As such, local processes of deciding whether to annex territory are not subject to state preemption.

however, is recognized as a matter of intramural authority.¹⁶¹ While Oregon courts have upheld the right of cities to remove property from its boundaries, it is unclear if cities may exercise this right in a manner other than the withdrawal process under state law. For the purposes of this Handbook, the following section is limited to relevant requirements under state law.

i. Annexation

Annexation is the process through which a city extends its boundaries to new territory. Any decision to annex land must comply with a state process because a city has no inherent authority to expand its boundaries.¹⁶² With a few exceptions, ORS Chapter 222 leaves it to each city or the city's voters to decide whether to annex new territory.¹⁶³ State law instead restricts what territory can be annexed and how. In other words, state law controls (1) the annexation procedure and (2) the type of territory that may be annexed.¹⁶⁴ Finally, many cities require a local election to decide when and where the city will annex new territory.¹⁶⁵ ORS Chapter 222 avoids conflicts with these local laws in all but one provision.¹⁶⁶

a. Territory to be Annexed

By law, only certain territories may be annexed into a city. Two main restrictions apply. First, a city may only annex territory that is "contiguous" to the city.¹⁶⁷ Second, a city may only annex territory if it is "reasonable" to do so.¹⁶⁸ The latter standard originated in case law and is applied on a case-by-case basis, taking into consideration land use laws, the city's projected growth, and the city's ability to provide urban services to the area, among other factors.¹⁶⁹

The contiguity requirement is found under ORS Chapter 222, which authorizes a city to annex new territory only if it "is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake, or other body of water."¹⁷⁰ This requirement does not necessarily mean that *most* of the territory must be contiguous to the city. Taken literally, this provision only requires some connection to the city, either by a narrow strip of land or even an annexed right-of-way running back to it.¹⁷¹ Courts applying the "reasonableness" standard likewise have held on many occasions that so-called "cherry stem" annexations are proper.¹⁷² As one court noted, an

¹⁶¹ *Id.*

¹⁶² *Id.*; see also *City of Corvallis v. State*, 304 Or App 171, 175 (2020) (noting "annexation is an extramural act.").

¹⁶³ See ORS 222.111(5), which generally requires a city election; see also ORS 222.120, which, in the absence of a city election, grants discretion to the city's governing body to decide whether to annex a territory or not.

¹⁶⁴ See generally ORS 222.111.

¹⁶⁵ *City of Corvallis*, 304 Or App at 177.

¹⁶⁶ See, e.g., ORS 222.915; ORS 222.750(7).

¹⁶⁷ ORS 222.111(1).

¹⁶⁸ See *Morsman v. City of Madras*, 191 Or App 149, 153-54 (2003).

¹⁶⁹ *Id.*

¹⁷⁰ ORS 222.111(1).

¹⁷¹ See *Dep't of Land Conservation & Dev. (DLCD) v. City of St. Helens*, 138 Or App 222, 228 (1995).

¹⁷² *Id.*; see also *Morsman*, 191 Or App 149 at 153-54.

irregularly shaped annexation is not “per se unreasonable,” suggesting that other factors weigh more on the reasonableness of annexation than the adjacency of the property to the city.¹⁷³

By and large, the most significant factor for the “reasonableness” of an annexation is whether it complies with land use law.¹⁷⁴ Therefore, a city preparing to annex new territory must be aware of any applicable statewide planning goals or local comprehensive plans.

b. Annexation procedure

For the most part, annexation may be initiated in one of two ways: through a petition by territory residents or through a motion of the city council.¹⁷⁵ The general rule is that whenever a proposal for annexation is raised, a city must submit the proposal to the voters of the territory and the voters of the city.¹⁷⁶ This rule is subject to many exceptions, which are addressed below. However, if no exceptions apply and elections are held in both the city and territory, then these two elections must occur within one year of each other.¹⁷⁷ The votes may happen simultaneously in the same election as long as the proposals appear on the ballot separately.¹⁷⁸

To promote annexation, any proposal may include a special rate of taxation for the new territory that is a ratio of the highest rate of taxation applicable to property within the city.¹⁷⁹ Proposals submitted by petition may include a special rate with a term of up to 10 years; those submitted by the city may have a term of up to 20 years.¹⁸⁰ The special rate may increase from fiscal year to fiscal year pursuant to a proposed schedule, but in no event can it exceed the rate of taxation on which the rate ratio is based.¹⁸¹ If the annexation is approved, then the city cannot tax the annexed territory at any other rate than the special rate for the term that it is in effect.¹⁸²

Not all annexations require elections in both the city and the territory. First, city elections are not required as long as a public hearing is held on the issue and the election is not mandatory under the city’s charter.¹⁸³ Second, a territory election is not required if an adequate number of landowners in the territory consent to annexation.¹⁸⁴ Third, under certain circumstances, neither a city or territory election is required, though the annexation itself might be.¹⁸⁵ In other words,

¹⁷³ *Morsman*, 191 Or App 149 at 153.

¹⁷⁴ *Id.* at 153-54.

¹⁷⁵ ORS 222.111(2).

¹⁷⁶ ORS 222.111(5).

¹⁷⁷ ORS 222.111(6).

¹⁷⁸ ORS 222.111(7).

¹⁷⁹ ORS 222.111(3).

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ ORS 222.120(1).

¹⁸⁴ ORS 222.125; ORS 222.127; and ORS 222.170.

¹⁸⁵ ORS 222.127; ORS 222.750; and ORS 222.855.

some provisions waive all election requirements for annexation and then require cities to take on new territory.¹⁸⁶

1. Annexation without City Elections

Public hearings under ORS 222.120 eliminate the need for a city election on annexation, unless a city charter provision expressly requires otherwise. In lieu of an election, this provision permits a city to hold a public hearing before the council on the matter of annexation. The meeting must be noticed at least once a week for two consecutive weeks and must provide an opportunity for voters in the city to “appear and be heard” on the issue.¹⁸⁷ Once this takes place, the city may declare annexation of a territory on condition that other requirements are satisfied.¹⁸⁸

This exception has limits. First, at least some city charters require that all annexations be put to a vote before city voters.¹⁸⁹ ORS 222.120 avoids preempting these laws by stating that a public hearing is permitted only if an election is not “expressly required...by the city charter.”¹⁹⁰ Second, an election may be unavoidable on the annexation issue — even for cities that do not expressly require one — if a referendum is called following the public hearing. Under ORS 222.120, any ordinance on annexation in lieu of a city election is subject to referendum.¹⁹¹ A successful referendum petition will nullify the effect of the public hearing and put the matter up for an election.¹⁹²

2. Annexation without Territory Elections

Just as public hearings may eliminate the need for a city election, the written consent to annexation by territory landowners may eliminate the need for a territory election. Generally, landowners may consent to annexation either by filing statements of consent with the city or by entering into annexation contracts with the city. ORS Chapter 222 provides multiple

An election on annexation is not required in the territory when:

(1)

222.170(1) -- Landowners consent by a triple majority.

(2)

222.170(2) -- Landowners and registered electors consent by a double majority.

(3)

222.125 -- Landowners consent unanimously and at least half the registered electors do also.

(4)

222.127 -- All landowners file a petition and the territory meets certain criteria.

(5)

222.750 -- The territory meets the criteria for an “island.”

(6)

222.855 -- Oregon Health Authority finds that the territory represents a “danger to public health.”

¹⁸⁶ *Id.*

¹⁸⁷ ORS 222.120(2)

¹⁸⁸ ORS 222.120(4).

¹⁸⁹ *See City of Corvallis v. State*, 304 Or App 171, 177 (2020).

¹⁹⁰ ORS 222.120(1).

¹⁹¹ ORS 222.120(4), (6)

¹⁹² *Id.*

standards of consent that, if met, eliminate the need for an election.

First, a territory election is not necessary under state law if a so-called “triple majority” of territory residents consent to annexation.¹⁹³ The term “triple majority” refers to there being support for annexation among **(1)** more than half of the landowners in the territory **(2)** who also own more than half of the total land in the territory, **(3)** the assessed value of which is more than half of the assessed value of all real property in the territory.¹⁹⁴ Oregon courts have upheld this form of annexation, despite the possibility that the landowners themselves may not be registered as voters or even residing in the territory to be annexed.¹⁹⁵ In *Morsman*, the court found this law does not discriminate against a suspect class, that there is no fundamental right under the U.S. Constitution to vote on annexation, and that the state has an interest in eliminating the burden of an election where it is already clear annexation is favored by many property owners.¹⁹⁶

Second, an election is unnecessary if instead a “double majority” of residents consent to annexation.¹⁹⁷ A “double majority” consists of **(1)** more than half of the registered voters in the territory and **(2)** the owners of more than half of the land, whether or not they are the same individuals.¹⁹⁸ As long as a majority of each class file statements of consent, then an election on annexation need not be held.¹⁹⁹

A statement of consent filed with a city is a public record and only is valid for one year, unless a longer period of time is expressly stated in writing.²⁰⁰ As noted above, consent may also take the form of an **annexation contract**, or an agreement between a city and a landowner that guarantees city services in return for the landowner’s “consent to eventual annexation.”²⁰¹ Unlike statements of consent, annexation contracts must be recorded and are binding on any successors in interest in the property.²⁰²

Significantly, neither one of these processes eliminates the need for the annexing city to hold a city election, or else a public hearing under ORS 221.120 if permitted by local law.²⁰³ As an additional requirement, both the double and triple majority provisions require that landowners file their statements of consent prior to the city election, or else the public hearing if permitted by local law.²⁰⁴ This distinction is important because other landlord consent provisions under ORS Chapter 222 *do* waive the requirement for city elections as well as territory elections.

¹⁹³ See ORS 222.170(1); see also *Morsman v. City of Madras*, 196 Or App 67, 70 (2004).

¹⁹⁴ ORS 222.170(1).

¹⁹⁵ *Morsman v. City of Madras*, 203 Or App 546, 556-563 (2006).

¹⁹⁶ *Id.*

¹⁹⁷ ORS 222.170(2).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ ORS 222.173.

²⁰¹ ORS 222.115.

²⁰² *Id.*

²⁰³ ORS 222.170(1)-(2).

²⁰⁴ *Id.*

3. Annexation without Any Election

A final category of provisions under ORS Chapter 222 features those that eliminate election requirements for both the city and the territory. Like the public hearing exception above, most of these provisions include a carve-out for ordinances or charters that do require elections on annexation.²⁰⁵ That said, one provision applies regardless of local law.²⁰⁶

Unanimous Landowner Consent

No election is required under state law in the city or in the territory proposed to be annexed if 100% of the landowners in the affected territory consent to annexation and other conditions are met.²⁰⁷ There are two such provisions: ORS 222.125 and ORS 222.127. Purportedly, these laws apply regardless of contrary provisions under local law, such as a charter that requires a local vote on annexation.²⁰⁸

Under ORS 222.125, cities “need not” hold an election in the territory or in their jurisdiction if all of the landowners and at least 50% of the electors in the territory consent to annexation.²⁰⁹ If these conditions are met, cities may declare annexation through a resolution or ordinance, showing the boundaries of the annexed area with an attached legal description.²¹⁰

Under ORS 222.127, no elections are permitted and cities must annex the proposed territory if they receive a petition signed by every landowner in a territory and a number of other conditions are met.²¹¹ This law preempts any local ordinance or charter that requires a city election.²¹² Annexation is required only if the territory is within the city’s urban growth boundary, is or will be subject to the city’s acknowledged comprehensive plan upon annexation, and is compliant with all other local ordinances.²¹³ The territory also must be contiguous.²¹⁴

The state enacted this law in 2016 as SB 1573.²¹⁵ To date, no court has addressed whether this law violates the home rule provisions of the Oregon Constitution.²¹⁶ Arguably, cities or else its voters have a right to select when to extend the city’s boundaries.²¹⁷ The decision to annex, not the annexation itself, might be a matter of local concern that blocks state preemption.²¹⁸ In *City of Corvallis v. State*, the court of appeals avoided ruling on this

²⁰⁵ See ORS 222.915; see also ORS 222.750(7).

²⁰⁶ ORS 222.127.

²⁰⁷ ORS 222.125, ORS 222.127

²⁰⁸ *Id.*

²⁰⁹ ORS 222.125.

²¹⁰ *Id.*

²¹¹ ORS 222.127(2).

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ See *City of Corvallis v. State*, 304 Or App 171, 176 (2020).

²¹⁶ *Id.* at 187 n.9.

²¹⁷ See *Mid-County Future Alts. Comm. v. City of Portland*, 310 Or 152, 163-64 (1990) (stating that “[t]here 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.”).

²¹⁸ *Id.*

question.²¹⁹ The court upheld ORS 222.127 as applied to Corvallis and Philomath because the city charters permit annexation without a local election whenever they are “mandated by state law.”²²⁰ Of course, some city charters do require an election for all annexations, even those mandated by state law.²²¹ The decision in *City of Corvallis v. State* does not resolve the conflict between ORS 222.127 and those charters.

Island Territories

No election is required for the annexation of so-called “island” territories that are entirely surrounded by a city’s boundaries.²²² Under ORS 222.750, a city may annex such a territory after one public hearing upon notice to every landowner in the territory.²²³ However, this provision does not waive the requirement for an election that is required by a city’s charter or ordinance.²²⁴ Moreover, if local law does require a city election, then ORS 222.750 requires that election be open to the residents of the island territory as well as the city.²²⁵

“Island” territories are territories that are (1) completely within the corporate boundaries of a city or (2) completely surrounded by the annexing city and other natural or artificial boundaries, such as other cities, a large body of water, and Interstate 5.²²⁶ Ironically, the provision does not apply to literal islands, i.e., territory that is completely surrounded by water.²²⁷

If a city seeks to annex an “island” territory under ORS 222.750, the city must annex the entire territory.²²⁸ Annexing a portion of the territory is not permitted because the provision authorizes annexation of “*such* territory,” not any part of it.²²⁹

Health Hazard Abatement

Finally, under the Health Hazard Abatement Law, no elections are permitted and a city must annex a territory if the Oregon Health Authority (OHA) finds that a public health danger within the territory can be abated through annexation.²³⁰ Just like ORS 222.750, this law does not apply “if the charter or ordinances of the city conflict with or are inconsistent with” the provision.²³¹ Thus, if local law does require an election on all annexations, this will take precedence.²³²

²¹⁹ *City of Corvallis*, 304 Or App at 181-82.

²²⁰ *Id.* at 182.

²²¹ *Id.* at 177.

²²² ORS 222.750(2); *see also* *Morsman v. City of Madras*, 203 Or App 546, 560 (2006).

²²³ ORS 222.750(2).

²²⁴ ORS 222.750(7).

²²⁵ ORS 222.750(8).

²²⁶ ORS 222.750(2).

²²⁷ ORS 222.750(3).

²²⁸ *See* *Costco Wholesale Corp v. City of Beaverton*, 343 Or 18, 25 (2007).

²²⁹ *Id.*

²³⁰ ORS 222.840 to ORS 222.915.

²³¹ ORS 222.915.

²³² *But see* *Pieper v. Health Division*, 288 Or 551, 557 (1980) (finding that a city charter that did not require city elections when the annexation is “mandated by state law” was not inconsistent with this law). In addition to the city of Corvallis, the city of Klamath Falls was involved in a series of cases regarding its use of this annexation process. *See, e.g.,* *West Side Sanitary Dist. V. Health Div. of Dep’t of Human Res.*, 289 Or 417, 419 n.1 (1980).

This law lists three examples of dangers to public health, but the list is not exclusive: (1) impure or inadequate domestic water, (2) inadequate sewage or garbage disposal, and (3) inadequate drainage of surface water.²³³ The proposed territory must also be “otherwise eligible” for annexation and must be within the urban growth boundary of the city.²³⁴

Annexations under this provision begin in one of three ways. First, the city itself can initiate the proposal by adopting a resolution calling for an OHA investigation into whether a public health danger exists in the proposed territory.²³⁵ Second, the local public health authority — generally the county — can initiate an OHA investigation in the same manner as the city.²³⁶ Third, at least 40% of residents in a territory may petition the local public health authority to initiate the OHA investigation.²³⁷

Next, OHA must hold a public hearing in the affected territory and hear any person who may be impacted by annexation, including city residents.²³⁸ Within 60 days of the hearing, OHA then must issue findings on whether a public health danger exists and provide an opportunity for additional oral or written arguments.²³⁹ Within 30 days of the final additional hearing, if any, the OHA director must file a certified copy of the findings with the city or else issue an order that no public health danger exists.²⁴⁰ At this time, OHA may reduce the boundaries of the territory that has been proposed for annexation.²⁴¹

If a city receives from OHA a certified copy of findings that a public health danger exists, then the city must adopt an ordinance that annexes the territory.²⁴² This ordinance, as well as any final order from OHA, is subject to judicial review.²⁴³

ii. Withdrawal

Withdrawal is the process of detaching territory from a city’s jurisdiction.²⁴⁴ Previously laws referred to this boundary change as “disconnection.”²⁴⁵ Like annexation, this process is a minor boundary change; it retracts the boundaries of a city but otherwise leaves the city intact.²⁴⁶ That said, withdrawal can be a significant land use decision.²⁴⁷ Ultimately, if an area is

²³³ ORS 222.850(5).

²³⁴ ORS 222.850(1).

²³⁵ ORS 222.855.

²³⁶ ORS 222.905(1).

²³⁷ ORS 222.905(2).

²³⁸ ORS 222.875(1).

²³⁹ *Id.*

²⁴⁰ ORS 222.880(1).

²⁴¹ ORS 222.880(3).

²⁴² ORS 222.900(1).

²⁴³ ORS 222.896.

²⁴⁴ ORS 222.460(1).

²⁴⁵ *See Schmidt v. City of Cornelius*, 211 Or 505, 509-10 (1957).

²⁴⁶ ORS 199.415(12).

²⁴⁷ *See Cogan v. City of Beaverton*, 226 Or App 381, 385 (2009).

withdrawn from the city, then from the date of withdrawal it becomes free from assessments and taxes by the city; however, it remains subject to any bonds or indebtedness.²⁴⁸

The withdrawal process under state law is relatively straightforward. As noted above, the Oregon Supreme Court expressly recognizes withdrawal as an exercise of intramural authority by cities; this authority flows from the right to amend a local charter under the home rule provisions of the Oregon Constitution.²⁴⁹ Theoretically, cities therefore have authority to adopt a withdrawal process under local law, though it is unclear what interest the state might have in maintaining a uniform process for withdrawal. This section will focus exclusively on the state's withdrawal process under ORS 222.460.

Withdrawals may only be proposed by a resolution of a city's governing body.²⁵⁰ The resolution must state the name of the city and the city's intent to withdraw, describe the boundaries of the territory to be withdrawn, and include a cadastral map of the area prepared by the county assessor.²⁵¹ No later than 30 days after adopting this resolution, the city must hold a properly noticed public meeting for the purpose of receiving testimony.²⁵² The city may choose to alter the withdrawal proposal based on this hearing.²⁵³ Once the hearing is held, the city must then prepare an order for a second meeting — a final hearing — that must take place no later than 50 days and no earlier than 20 days from the date of the order.²⁵⁴

The order must declare that **written requests** may be submitted prior to the final hearing by registered electors in the territory proposed to be withdrawn from the city.²⁵⁵ If the city receives written requests from 100 of these electors, or at least 15% of these electors, then the city must hold an election on the withdrawal.²⁵⁶ alternatively, if insufficient requests are filed, then the city is authorized to declare the territory detached from the city without holding an election. If an election is necessary, a majority of the votes cast in the affected territory need to support the proposed withdrawal.²⁵⁷

B. Major Changes: Merger, Consolidation, and Disincorporation

State law provides the processes for merger, consolidation, and disincorporation of cities. In a merger, one or more cities go out of existence and the belonging territory becomes part of an

²⁴⁸ ORS 222.460(10).

²⁴⁹ *Schmidt*, 211 Or at 517 (holding that cities cannot annex territory without a grant of extramural authority but that cities “may exercise their home rule powers and *exclude* territory previously included within their limits.” (emphasis in original)).

²⁵⁰ ORS 222.460(2).

²⁵¹ ORS 222.460(3).

²⁵² ORS 222.460(4).

²⁵³ ORS 222.460(5).

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ ORS 222.460(6)-(8).

²⁵⁷ *Id.*

existing city. In a consolidation, one or more cities — or adjacent unincorporated territories — combine to form a new city. Disincorporation involves just one city terminating its existence.

Unless expressly permitted by state law, local laws have no bearing on these procedures. The power to surrender a city charter is not among the powers granted to cities by the home rule provisions of the Oregon Constitution.²⁵⁸ Accordingly, the power of a city to give up its charter — if it has this power at all — must flow from extramural authority granted to it by the state.²⁵⁹ While the Oregon Constitution prohibits the state from repealing the charter of any one city, i.e. by special laws, the state may establish any number of processes for repealing a charter under general law.²⁶⁰ These are those processes.

Note that a report of any major boundary change by a city must be filed with the county clerk and assessor within 10 days of the change.²⁶¹

i. Merger

State law permits the merger of a city into an adjoining city upon an election.²⁶² The Oregon Constitution expressly authorizes the state to establish this process, but with the added condition that “a majority of the electors of each of the incorporated cities...” support the merger.²⁶³ To be eligible, the merging cities also must be “adjoining.”²⁶⁴ State law defines “adjoining” as sharing a river as a common boundary or possessing boundaries that are within 1,500 feet from each other at the nearest point.²⁶⁵ State law also requires a written agreement prior to a merger that addresses each city’s unfunded liabilities or surpluses, if any, in the Public Employees Retirement System (PERS).²⁶⁶ Examples of merger include the cities of Empire and Eastside, which merged into Coos Bay on separate occasions, and the city of West Salem, which merged into Salem in 1949.²⁶⁷

For a city to merge into an existing city and surrender its charter, the question of merger must first be raised by a petition. Generally, this petition must comply with state laws governing prospective petitions for local initiatives and referendums.²⁶⁸ However, a city may have its own process for local initiatives and referendums pursuant to Article IV, Section 1 of the Oregon

²⁵⁸ See Or Const, Art XI, § 2, which provides that a city may adopt or amend a charter, but not repeal it.

²⁵⁹ See *McKeon v. City of Portland*, 61 Or 385, 389 (1912) (finding that while voters have “the power to enact or amend the [charter] giving it a legal entity, but they have no power to repeal that instrument.”).

²⁶⁰ *Id.*

²⁶¹ ORS 222.010(1).

²⁶² ORS 222.610; see also Or Const, Art XI, § 2a.

²⁶³ Or Const, Art XI, § 2a

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ ORS 222.045.

²⁶⁷ ANDIE E. JENSEN & THE COOS HISTORICAL & MARITIME MUSEUM, *IMAGES OF AMERICA COOS BAY* 14 (Arcadia Publishing, 2012); *West Salem was once its own city*, STATESMAN JOURNAL (March 8, 2014) <https://www.statesmanjournal.com/story/life/2014/03/07/west-salem-was-once-its-own-city/6185953/>.

²⁶⁸ ORS 222.610, ORS 222.620(4).

Constitution.²⁶⁹ Regardless, merger petitions cannot be submitted more than once in a 12-month period and must include a proposed permanent tax rate for the merged city.²⁷⁰ Further, this rate must be the rate that would produce the same amount of tax revenue otherwise produced by the cities if they remained separate.²⁷¹ Any city that has not yet imposed a property tax may propose a permanent rate limit as part of this process, which will be taken into account in determining the rate for the merged city.²⁷² If a petition meets all of these requirements under state or local law, then the city must call an election.²⁷³

For the second city, the one into which the first city is merging, the question of merger may be submitted to its voters in one of two ways. The city may do so on its own resolution, or a second citizen petition may compel the city to put the merger to a vote.²⁷⁴ The petition must meet the same requirements as the first petition above.²⁷⁵

For the most part, merger ballot measures follow the procedures for any other measure under Oregon’s election law.²⁷⁶ There are a few exceptions. First, the statement that is part of each city’s ballot measure must include the proposed permanent tax rate from above, as well as a general description of the city boundaries that would result from the merger.²⁷⁷ Second, the election notice for each city’s measure must include a map of the new city’s boundaries.²⁷⁸ Third, each election must be held “on the next practicable date” permitted for a local election.²⁷⁹ For a city that has not yet approved operating taxes and is proposing a permanent rate limit as part of its merger

Key Differences Between Merger and Consolidation

Merger

- Separate elections
- Two cities combine into an existing city
- Prospective petition is unnecessary
- Cannot include any surrounding areas
- Might require an “absolute majority” of eligible voters

Consolidation

- Single election
- Two or more cities combine to form a new city
- Prospective petition must be filed
- May include certain surrounding areas
- Requires a majority of the votes cast

²⁶⁹ ORS 222.620(4)

²⁷⁰ ORS 222.620(5)

²⁷¹ ORS 222.620(3)

²⁷² ORS 222.050(2). This rate must comply with Article XI, Section 11(c)(3) of the Oregon Constitution. *Id.* If the merger ultimately does not take place, then no permanent rate limit will be established in the city, regardless of the outcome of that city’s election. ORS 222.050(7).

²⁷³ ORS 222.620(1).

²⁷⁴ ORS 222.650(1).

²⁷⁵ ORS 222.650(2).

²⁷⁶ ORS 222.620(6), ORS 222.650(6).

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ ORS 222.620(7); ORS 222.650(7).

measure, the election must be held in May or November.²⁸⁰ The two elections do not need to be held simultaneously; state law provides that “it is sufficient if both are held within a period of one year.”²⁸¹

To be valid, each city’s merger measure requires authorization by “a majority of the electors” of each city.²⁸² For a city that has not yet approved operating taxes and has proposed a permanent rate limit as part of the merger, the merger measure also must be voted on by at least 50% of registered voters eligible to vote in the election.²⁸³ This is sometimes referred to as an “absolute majority” instead of a simple majority.²⁸⁴ Arguably, an absolute majority is required for all mergers because the Oregon Constitution requires support of “a majority of the electors,” not a majority of the electors *voting* on the measure.²⁸⁵

If the merger is approved by a majority of the eligible voters in each affected city, then the two cities will merge 30 days after the date of the last election held on the matter.²⁸⁶ The effect of the merger is that all property, debts and liability, and general jurisdiction of the merging city is transferred to the newly merged city. Any pending suits, actions, or proceedings of the merging city must be “defended or prosecuted to termination” by the merged city.²⁸⁷

ii. Consolidation

In addition to mergers, state law also provides a process for the joining of two or more adjoining cities and adjoining unincorporated areas.²⁸⁸ In contrast to mergers, consolidation results in the incorporation of a new city.²⁸⁹ The cities of Oceanlake, DeLake, and Taft consolidated in 1965 and were incorporated as Lincoln City.²⁹⁰ Past efforts to consolidate the cities of Coos Bay and North Bend have been rejected by voters.²⁹¹

²⁸⁰ ORS 222.050(4).

²⁸¹ ORS 222.610.

²⁸² *Id.*

²⁸³ ORS 222.050(4)(a). Furthermore, as noted above, if the merger measure does not pass in both cities, then no permanent rate is established. ORS 222.050(7).

²⁸⁴ See *Chamberlain v. Myers*, 344 Or 605, 608-9 (2008).

²⁸⁵ Or Const, Art. XI, § 2a. This argument has been raised before in the Oregon Supreme Court. See *School Dist. No. 17 of Sherman Cty. v. Powell*, 203 Or 168, 179 (1955) (decided on other grounds). Likewise, Oregon’s disincorporation statute borrows this language verbatim and this argument has been raised in that context as well. See *De Young v. Brown*, 297 Or App 355, 360 (2019) (rev’ allowed). Oregon’s election law defines “elector” as an “individual qualified to vote.” ORS 254.005.

²⁸⁶ ORS 222.680.

²⁸⁷ ORS 222.700(1).

²⁸⁸ ORS 222.210(1). Consolidation cannot occur with just one city and an unincorporated area. See *Mid-County Future Alts. Comm. v. Portland Metro. Area Local Gov’t Boundary Comm’n*, 300 Or 14, 23 (1985).

²⁸⁹ ORS 222.210.

²⁹⁰ *History of Lincoln City Oregon*, LINCOLN CITY CHAMBER OF COMMERCE (2018), <https://lcchamber.com/history.htm#:~:text=Lincoln%20City%20History&text=The%20area%20that%20now%20is,of%20Cutler%20City%20and%20Nelscott>, (last accessed June 15, 2020).

²⁹¹ ANDIE E. JENSEN & THE COOS HISTORICAL & MARITIME MUSEUM, *IMAGES OF AMERICA COOS BAY 14* (Arcadia Publishing, 2012).

Consolidation requires two or more cities to repeal their charters for the charter of the newly incorporated city. Unlike annexation, unincorporated territories do not need to be contiguous to the consolidating cities; the consolidation process permits the incorporation of noncontiguous territory if it is within three miles from “the rest of the territory of the city.”²⁹² Consolidation elections require approval from a majority of voters in **(1)** the most populous city proposed to be consolidated and **(2)** at least one other city or unincorporated area. If two or more cities propose to consolidate, state law also requires a written agreement addressing each city’s unfunded PERS liabilities or surpluses, if any.²⁹³

Like incorporation, the consolidation process begins by filing a prospective petition with the county clerk in which the proposed city lies.²⁹⁴ In the event the proposed city lies in more than one county; the petition is filed with the county clerk of the county in which the largest part of the proposed city lies.²⁹⁵ In addition to the required petition, consolidation necessitates the filing of an economic feasibility statement.²⁹⁶ This economic feasibility statement must contain three things: “(1) a description of the services and functions to be performed or provided by the proposed city; (2) an analysis of the relationship between the services and functions to be provided by the proposed city and other existing or needing governmental services; and (3) a proposed first year line item operating budget and a projected third year line item operating budget for the proposed city that demonstrates the city’s economic feasibility.”²⁹⁷

The prospective petition must also state the proposed city’s permanent rate limit for operating taxes.²⁹⁸ As with mergers, a city that has not imposed a property tax may propose a permanent rate limit as part of the consolidation process; if so, the city’s proposed rate limit must be taken into account in determining the proposed rate limit of the new city.²⁹⁹

Upon receiving the prospective petition and the economic feasibility statement, the county clerk dates and time stamps the petition and authorizes its circulation.³⁰⁰ The clerk also sends a copy of the petition and economic feasibility statement to each of the cities included in the proposed consolidation.³⁰¹

The consolidation process requires this petition to be signed by no less than 10% of the electors of each city and unincorporated areas included in the consolidation.³⁰² All signatures

²⁹² ORS 222.210(2).

²⁹³ *Id.*

²⁹⁴ ORS 222.230(1).

²⁹⁵ *Id.*

²⁹⁶ ORS 222.225.

²⁹⁷ *Id.*

²⁹⁸ ORS 222.030.

²⁹⁹ ORS 222.050(2)-(3). As with mergers, this rate must comply with Article XI, Section 11(c)(3) of the Oregon Constitution, and if the consolidation ultimately does not take place, then no permanent rate limit is established for the city regardless of the election outcome. ORS 222.050(7).

³⁰⁰ ORS 222.230.

³⁰¹ *Id.*

³⁰² ORS 222.220.

must be obtained within one year of filing the prospective petition with the county clerk.³⁰³ The petition must state the name of the proposed new city, the names of every city to be included in the proposed city, and the boundaries of every unincorporated boundary that would be included as well.³⁰⁴ The petition must also include the proposed permanent tax rate limit for the proposed city, which must be the rate that would generate the same amount of tax revenue that the city or cities would otherwise produce in the absence of consolidation.³⁰⁵ Once the signatures are collected, the completed petition may be filed with the city recorder of any city that the petition proposes to consolidate.³⁰⁶

Once the petition is filed, a joint convention is required of the governing bodies of all of the cities proposed for consolidation. The convention must be held at the usual meeting place of the governing body of the city with the largest population, and it must be held within 20 days from when the completed petition is received.³⁰⁷ If the governing bodies find the petition proper and compliant with Oregon's planning goals, then each governing body approves the petition and appoints two residents from its city to be members of a charter commission tasked with drafting the proposed consolidated city's new charter.³⁰⁸ In cases where the proposed consolidation also includes unincorporated areas, the governing body for that county must appoint two additional electors to the charter commission.³⁰⁹ At this stage, if the governing bodies determine that the proposal includes noncontiguous areas separated by a distance of more than three miles, this must be stated and the governing bodies must cancel any further proceedings related to the consolidation proposal.³¹⁰

The charter commission has 60 days from the date of its creation to prepare a charter.³¹¹ During the drafting of the proposed charter, the charter commission may employ attorneys and seek other assistance at the expense of the cities proposed to be incorporated.³¹² Once the charter commission finalizes its proposed charter, the commission's secretary files certified copies of the charter with the governing bodies.³¹³

The consolidation election follows the standard procedure for local measures under Oregon's election law, but with several caveats.³¹⁴ First, the election must be held on the date of the next primary or general election but cannot be earlier than 90 days after the filing date of the proposed city's charter.³¹⁵ The election must be held in May or November if a city that has not

³⁰³ ORS 222.230(2).

³⁰⁴ *Id.*

³⁰⁵ ORS 222.230(3).

³⁰⁶ ORS 222.230(2).

³⁰⁷ ORS 222.230(4).

³⁰⁸ ORS 222.240.

³⁰⁹ *Id.*

³¹⁰ ORS 222.210(2).

³¹¹ ORS 222.240.

³¹² *Id.*

³¹³ ORS 222.250(1).

³¹⁴ ORS 222.265(1).

³¹⁵ ORS 222.250(2).

yet approved operating taxes is proposing a permanent rate limit during consolidation.³¹⁶ Second, the chief elections officer is the clerk of the county in which the largest of the cities proposed to be consolidated resides.³¹⁷ Third, if the proposal includes unincorporated areas, then notice of the election must include a map of the boundaries of each unincorporated area and those of each city.³¹⁸ Fourth, the ballot title must include a general description of the proposed city's boundaries. The statement must use "streets and other generally recognized features" and cannot exceed 150 words.³¹⁹ Fifth, the consolidation measure itself must ask three questions: **(1)** whether the proposed city should be incorporated, **(2)** whether the proposed charter should be adopted, and **(3)** whether the proposed permanent rate for the city should be adopted.³²⁰

Drafting the ballot title is the subject of a second joint convention of the cities.³²¹ Once the governing bodies receive the draft charter, they must meet again to adopt a ballot title for the question of consolidation.³²² The ballot required for consolidation must comply with the requirements of ORS 250.035.³²³ Upon completion of the ballot title, but no later than the 61st day before the date of the election, the clerk of this joint convention must file the ballot title with the county clerk of the county in which the largest of the cities resides.³²⁴ However, if this second joint convention does not result in an agreement upon the date of the election or the adoption of a ballot title, then the county clerk of the county in which the largest of the cities resides must determine the ballot title.³²⁵

To consolidate, the majority of the votes cast in the most populous city and the majority of the votes cast in at least one other city or unincorporated area must favor consolidation. Of course, for a city that has not yet approved operating taxes and has proposed a permanent rate limit as part of the consolidation process, the consolidation measure also must be voted on by at least 50% of registered voters eligible to vote in the election.³²⁶ Upon conclusion of the election, it is the chief election officer's responsibility to canvass separately the votes cast in each city and in each unincorporated area.³²⁷ The chief election's officer shall deliver a certified copy of the abstracts to the governing body of each city, and the governing bodies then meet in a third joint convention to review the abstracts and determine the outcome of the election.³²⁸ If the election results cause more than three miles of noncontiguous area to exist, those portions not contiguous shall not be part of the new consolidated city.³²⁹ Otherwise, if sufficient votes are cast in favor of

³¹⁶ ORS 222.050(4).

³¹⁷ ORS 222.265(2).

³¹⁸ ORS 222.265(3).

³¹⁹ ORS 222.250(4).

³²⁰ ORS 222.250(2).

³²¹ ORS 222.250(1).

³²² *Id.*

³²³ *Id.*

³²⁴ ORS 222.250(5).

³²⁵ ORS 222.250(3).

³²⁶ ORS 222.050(4).

³²⁷ ORS 222.270(1).

³²⁸ ORS 222.270(2).

³²⁹ ORS 222.270(4); *see* ORS 222.210(2).

consolidation, the joint governing bodies issue a proclamation declaring the new consolidated city.³³⁰ The proclamation issued by the governing bodies is to be delivered to the Secretary of State by the officer performing the clerk's duties.³³¹

Should the first election not result in a consolidation, there exists the potential for a second consolidation election.³³² Any city or area may request a second consolidation election if it meets one of the following descriptions:

- (1) A majority of votes cast in the first election in the city or area from which a second vote is being requested was in favor of the consolidation but the city or unincorporated area is not contiguous to any other portion of the consolidated city; or
- (2) A majority of votes cast in the election in the city or unincorporated area is against consolidation but the city or unincorporated area is contiguous to a consolidated city.³³³

If one of these conditions is met, then the petition for a second petition may be filed. The petition must meet the requirements for an initiative petition under state law or else the local laws of the county.³³⁴ The petition must be filed with the clerk of the county in which the city or territory lies no later than 60 days after the date of the first election; if it is filed, then the chief elections officer will call a second election for the area on the next available election date that is no sooner than 60 days after the filing date.³³⁵

Once all elections are finalized, the chief elections officer has 30 days to call a special election in the consolidated city to elect officers.³³⁶ The actual election to determine the city's officers must be held on a date specified in ORS 222.230 and cannot be sooner than 90 days after the date on which the chief elections officer called for the election.³³⁷

On the 10th day following the date on which officer elections is called, elected officials will take office.³³⁸ The day the elected representatives assume office (absent a different provision in the charter) is the date the newly consolidated city is officially incorporated as a city.³³⁹

A consolidation has many impacts. Upon the city's incorporation, it obtains all of the assets, liabilities, and obligations of the cities it encompassed.³⁴⁰ All of the ordinances in effect

³³⁰ ORS 222.270(3)

³³¹ ORS 222.270(5)

³³² ORS 222.275(1).

³³³ *Id.*

³³⁴ ORS 222.275(3).

³³⁵ ORS 222.275(4).

³³⁶ ORS 222.280(1).

³³⁷ *Id.*

³³⁸ ORS 222.280(2).

³³⁹ ORS 222.280(3).

³⁴⁰ ORS 222.295.

in the original cities, “so far as [they] are not inconsistent with the [new] charter . . . , shall [remain] in effect” and become the consolidated city’s ordinances.³⁴¹ And all complaints and prosecutions for crimes committed or ordinances violated, and any other suit or cause of action, in the original cities become the responsibility of the consolidated city, absent a charter provision to the contrary.³⁴²

iii. Disincorporation

Finally, state law permits cities to disincorporate in certain circumstances.³⁴³ Two main conditions apply. First, cities seeking to disincorporate cannot be liable for any debt or for any other obligation.³⁴⁴ Second, a “majority of the electors of the city [must] authorize” the disincorporation.³⁴⁵ The clause “majority of electors” replicates verbatim the language in Article XI, Section 2a, of the Oregon Constitution.³⁴⁶ As courts have noted, it is unclear if this language requires a simple majority of the votes cast in an election or an “absolute majority” of the city’s *registered* voters.³⁴⁷ If an absolute majority is required, then cities would need at least a 50% turnout of its voters and, among them, a majority that supports disincorporation. Oregon courts have not yet resolved this question.³⁴⁸

To disincorporate, a petition must be filed with the city in accordance with the process for a local initiative or referendum.³⁴⁹ Upon receiving a petition that meets these requirements, the city must call an election on the topic. The election on disincorporation must be held during a November election and, if the disincorporation measure fails, the petitioners must wait two years before a subsequent attempt.³⁵⁰

Disincorporation becomes effective 60 days after it is authorized.³⁵¹ Within 30 days after it is authorized, the city must convey all of its real property and property rights to the county in which it is located. The city’s records must be transferred to the county by day 60.³⁵²

³⁴¹ ORS 222.300(1). Oregon law is silent on how to resolve inconsistencies *among* original cities’ ordinances. For instance, consolidating cities are certain to have ordinances on subjects like traffic, utilities, and business licenses. Duplicate provisions will create ambiguity and some provisions might directly conflict with one another. To avoid complex legal disputes, cities should determine in advance what ordinances will remain in effect and repeal the others upon consolidation.

³⁴² ORS 222.300(2).

³⁴³ ORS 221.610.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*; *see also* Or Const, Art XI, § 2a.

³⁴⁷ *See* De Young v. Brown, 297 Or App 355, 360 n.3. (2019) (quoting Chamberlain v. Myers, 344 Or 605, 609 (2008)).

³⁴⁸ *See* School Dist. No. 17 of Sherman Cty. v. Powell, 203 Or 168, 179 (1955) (decided on other grounds).

³⁴⁹ ORS 221.621(3).

³⁵⁰ ORS 221.621(4).

³⁵¹ ORS 221.650.

³⁵² *Id.*

CITIES

222.520	Annexation of less than entire district; assumption of obligations by city conditional	222.700	Effect of merger on pending actions and proceedings; street work proceedings
222.524	Procedure for withdrawal of part of district from district	222.710	Return statements filed with county recording officer
222.528	Territory withdrawn from district not liable for certain obligations	222.750	Annexation of unincorporated territory surrounded by city
222.530	Procedure for division of assets on withdrawal of part of district; arbitration and award	HEALTH HAZARD ABATEMENT	
222.540	Procedure for division of installations on withdrawal of part of water district; appeal; joint operations	222.840	Short title
222.550	Withdrawal of greater portion of water district; dissolution optional; transfer of property to city	222.850	Definitions for ORS 222.840 to 222.915
222.560	Procedure for division of installations on withdrawal of part of sanitary district; appeal; joint operation	222.855	Annexation to remove danger to public health
222.570	Effect on metropolitan sanitary districts	222.860	Proposal for annexation
222.575	Agreements for joint operation by city and district	222.870	Hearing in affected territory; notice
222.580	Procedure applicable to prior annexations in which no property division was made	222.875	Purpose and conduct of hearing; written findings of fact; rules
MERGER OF CITIES; ANNEXATION OF TERRITORY SURROUNDED BY CITY		222.880	Oregon Health Authority order or finding; hearing upon petition; alteration of boundaries; tax differential
222.610	Surrender of city charter and merger into adjoining city; elections required	222.883	Stay of proceedings by Oregon Health Authority; purpose; limit
222.620	Submission of merger issue to electors of city surrendering charter; petition for merger; conduct of election	222.885	Alternative plan by petition or resolution; stay of proceedings
222.650	Submission of merger issue to electors of city retaining charter; tax rate limit for successor city; notice of election	222.890	Review of alternative plan
222.680	Effective date of merger	222.896	Judicial review
222.690	Effect of merger on rights, liabilities and jurisdiction of the merged cities	222.897	Study and plan for alleviation of health danger by city; procedure if city fails to act
		222.898	Determination if health danger can be alleviated; approval of plans; notice to city
		222.900	City to adopt ordinance
		222.905	Proposal or petition for annexation
		222.911	Participation of director, officer or employee with interest in affected territory
		222.915	Application of ORS 222.840 to 222.915
		PENALTIES	
		222.990	Penalties

GENERAL PROVISIONS

222.005 Notice to public utilities of annexation; contents; effect. (1) When territory is approved for annexation to a city by city council action under ORS chapter 199 or this chapter, the recorder of the city or other city officer or agency performing the duties of recorder under this section, not later than 10 working days after passage of a resolution or ordinance approving the proposed annexation, shall provide by certified mail to all public utilities, electric cooperatives and telecommunications carriers operating within the city each site address to be annexed as recorded on county assessment and tax rolls, a legal description and map of the proposed boundary change and a copy of the city council's resolution or ordinance approving the proposed annexation.

(2) Additional or increased fees or taxes, other than ad valorem taxes, imposed on public utilities, electric cooperatives and telecommunications carriers as a result of an annexation of territory to a city shall become effective on the effective date of the annexation if notice of the annexation is given to public utilities, electric cooperatives and telecommunications carriers by certified mail not later than 10 working days after the effective date of the annexation. However, if notification of the effective date of the annexation is provided to the public utilities, electric cooperatives and telecommunications carriers later than the 10th working day after the effective date of the annexation, the additional or increased fees or taxes become effective on the date of notification.

(3) As used in this section:

(a) "Effective date of annexation" is the effective date described in ORS chapter 199 or this chapter, whichever is applicable.

(b) "Public utility" has the meaning given that term in ORS 757.005.

(c) "Telecommunications carrier" has the meaning given that term in ORS 133.721. [1981 c.238 §2; 1985 c.702 §5; 1987 c.447 §116; 1989 c.736 §1; 1991 c.136 §1; 1999 c.1093 §11]

222.010 Report of city boundary changes; contents; time for filing; exception. (1) Every city, through its recorder or other city officer or agency designated to perform the duties of the recorder under this section, shall report to the county clerk and county assessor of the county within which the city is located all changes in the boundaries or limits of the city. The report shall contain a detailed legal description of the new boundaries established by the city. The report shall be filed by the city within 10 days from the effective date of the change of any boundary lines.

(2) For purposes of ad valorem taxation, a boundary change must be filed in final approved form with the county assessor and the Department of Revenue as provided in ORS 308.225.

(3) Subsection (1) of this section does not apply to a minor boundary change ordered under ORS 199.410 to 199.519. [Amended by 1969 c.494 §26; 1971 c.462 §18; 1985 c.702 §6; 2001 c.138 §7]

222.020 [Repealed by 1955 c.475 §12]

222.030 Assessor to furnish statement of assessed valuation of property in territory to be annexed. When a change of the boundaries of a city through the annexation of territory is proposed pursuant to ORS 199.410 to 199.519, or 222.111 to 222.180 or city charter, the assessor of the county or counties wherein the territory to be annexed is located, shall furnish upon official request within 20 days, a statement showing for the current fiscal year the assessed valuation of the taxable property in the territory to be annexed. [1957 c.236 §1; 1969 c.494 §27]

222.040 Delay of effective date of actions under this chapter because of election; effective date of certain annexations and transfers of territory. (1) Notwithstanding any provision of this chapter that provides a different effective date, an annexation, transfer of territory, consolidation or merger under this chapter, or any removal by a city by ordinance of a newly annexed area from a special district, shall not become effective during the period:

(a) Beginning after the 90th day before a primary election or general election and ending on the day after the election; or

(b) Beginning after the deadline for filing the notice of election before any other election held by any city, district or other municipal corporation involved in the annexation, transfer of territory, consolidation, merger or removal, and ending on the day after the election.

(2) If the effective date established for an annexation, transfer of territory, consolidation, merger or removal is a date that is prohibited under this section, the annexation, transfer of territory, consolidation, merger or removal shall become effective on the day after the election.

(3) For the purposes of ORS 308.225 only, the effective date of an annexation under ORS 222.180 shall be the date of filing of the abstract referred to in ORS 222.180. [1981 c.391 §3; 1983 c.514 §1b; 1985 c.130 §5; 1985 c.808 §71; 1989 c.923 §25; 1995 c.712 §92]

222.045 Effect of split, consolidation or merger of two or more cities on unfunded PERS liability or surplus. If a city splits into two or more cities, or two or more cities consolidate or merge, the cities af-

affected by the split, consolidation or merger, including cities created by the split, consolidation or merger, must enter into a written agreement that addresses any unfunded Public Employees Retirement System liabilities or surpluses and deliver a copy of the agreement to the Public Employees Retirement Board as required by ORS 238.231. [2003 c.802 §164; 2005 c.808 §23]

Note: 222.045 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.050 Certain consolidations and mergers; additional question concerning taxes authorized; requirements for approval. (1) This section applies if a consolidation or merger proposes to consolidate or merge two or more cities and at least one of the cities has not previously imposed ad valorem property taxes.

(2) The question of the consolidation or merger that is submitted to the electors of the city that has not previously imposed ad valorem property taxes may also propose a permanent rate limit on operating taxes as described in section 11 (3)(c), Article XI of the Oregon Constitution.

(3) The permanent rate limit proposed under subsection (2) of this section shall be taken into account in determining the permanent rate limit for the city following consolidation or merger as provided in section 11 (3)(d), Article XI of the Oregon Constitution.

(4) The question of the consolidation or merger that is submitted to the electors of the city that has not previously approved operating taxes shall be considered approved by such electors if a majority of the votes cast are in favor of the consolidation or merger and:

(a) At least 50 percent of registered voters eligible to vote in the election cast a ballot; or

(b) The election is held in May or November of any year.

(5) ORS 250.036 applies to a ballot title for an election described in this section.

(6) Notwithstanding that a majority of all electors voting on the question of consolidation or merger approve the consolidation or merger, the consolidation or merger shall not be considered approved if the voting participation requirements in subsection (4) of this section have not been met in the city to which this section applies.

(7) If the city to which this section applies approves the consolidation or merger but the consolidation or merger is not approved by the other electors voting on the

question or for some other reason does not occur, no permanent rate limit for operating taxes shall be established for the city as a result of the election. [1997 c.541 §358d; 2010 c.29 §13]

Note: 222.050 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

ANNEXATION OF CONTIGUOUS TERRITORY

(Temporary provisions relating to annexation of certain industrial lands)

Note: Sections 3 and 10, chapter 737, Oregon Laws 1987, provide:

Sec. 3. (1) Notwithstanding any other provision of law, when property:

(a) Is property on which no electors reside;

(b) Is zoned for industrial uses;

(c) Has sewer and water lines paid for and installed by the property owner; and

(d) Has an assessed valuation, including improvements, of more than \$7 million

that property can only be annexed by or to a city after the city receives a petition requesting annexation from the owner of the property.

(2) Property described in subsection (1) of this section shall not be included with other territory as part of an annexation, or annexed under ORS 222.750, unless the owner of the property consents to the annexation in the form of a petition for annexation.

(3) This section applies to property that, on September 27, 1987, was within the jurisdiction of a local government boundary commission. [1987 c.737 §3; 1997 c.516 §14]

Sec. 10. Section 3, chapter 737, Oregon Laws 1987, is repealed on June 30, 2035. [1987 c.737 §10; 1989 c.226 §1; 1997 c.226 §1; 2005 c.844 §8]

Note: Sections 7, 8 and 11, chapter 539, Oregon Laws 2005, provide:

Sec. 7. Section 8 of this 2005 Act is added to and made a part of ORS 222.111 to 222.180. [2005 c.539 §7]

Sec. 8. (1) A lot, parcel or tract may not be included in territory proposed to be annexed unless the owner of the lot, parcel or tract gives written consent to the annexation, if the lot, parcel or tract:

(a) Is zoned for industrial use or designated for industrial use zoning in an acknowledged comprehensive plan;

(b) Is land on which no electors reside, unless one or more electors living on-site are employed or engaged to provide security services for the industrial user of the land;

(c) Has an assessed value of more than \$2 million, including improvements; and

(d) Is in unincorporated Jackson County, either:

(A) Within the urban unincorporated community of White City, west of Oregon Route 62; or

(B) Within the urban growth boundary of the City of Medford, west of Oregon Route 99.

(2) After annexation of a lot, parcel or tract described in subsection (1) of this section, the development rights that apply to the lot, parcel or tract under the industrial zoning classification applicable to the lot, parcel or tract when it is annexed are retained and run with the lot, parcel or tract.

(3) As used in this section, “urban unincorporated community” means an unincorporated community that:

- (a) Includes at least 150 permanent residential dwelling units;
- (b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;
- (c) Includes areas served by a community sewer system; and
- (d) Includes areas served by a community water system. [2005 c.539 §8]

Sec. 11. Sections 2, 4, 6, 8 and 10 of this 2005 Act are repealed June 30, 2016. [2005 c.539 §11]

Note: Sections 5, 6, 7, 9 (2) and 11, chapter 844, Oregon Laws 2005, provide:

Sec. 5. (1) Notwithstanding any provision of ORS 195.205 to 195.225, 199.410 to 199.534, 222.111 to 222.180, 222.750 and 222.840 to 222.915, property described in subsection (2) or (3) of this section may not be annexed by or to a city unless the city receives consent to the annexation from the owner of the property in the form of a petition for annexation.

(2) Property for which annexation is limited by subsection (1) of this section is property:

- (a) That is composed of one or more lots, parcels or tracts that:
 - (A) Are owned by the same individual or entity, including an affiliate or subsidiary of the entity;
 - (B) Are contiguous or are separated from each other only by a public right of way, a stream, a bay, a lake or another body of water; and
- (C) Together comprise at least 150 acres;
- (b) On which no electors reside;
- (c) That was zoned for industrial, employment or transit-oriented employment uses on December 31, 2004;
- (d) That has private, on-premises security services; and
- (e) That has an assessed valuation, including improvements, of more than \$12 million.

(3) Subsection (1) of this section applies to a lot, parcel or tract that is owned by the same individual or entity, including an affiliate or a subsidiary of the entity, that owns the property described in subsection (2)(a) of this section if the lot, parcel or tract:

- (a) Is within two miles of the property described in subsection (2)(a) of this section; and
 - (b) Contains 10 or more acres that are contiguous or separated from each other only by a public right of way, a stream, a bay, a lake or another body of water.
- (4) A city may not obtain approval of an owner for annexation under this section by requiring or requesting that the owner waive remonstrance or agree to annexation in order to receive utility service or other city services located in the city right of way at the same price the city charges an owner of similar property that is within the city. [2005 c.844 §5]

Sec. 6. An area of land within the urban growth boundary of the metropolitan service district established in the Portland metropolitan area may not be annexed under ORS 222.750 if:

- (1) The area of land is larger than seven acres and is zoned for industrial use;
- (2) The land is owned by an Oregon-based business entity that has been in continuous operation, either directly or through a predecessor, for at least 60 years; and
- (3) The business entity employs more than 500 individuals on the land. [2005 c.844 §6]

Sec. 7. An area of land within the urban growth boundary of the metropolitan service district established

in the Portland metropolitan area may not be annexed under ORS 222.750 if:

- (1) The area of land is larger than 14 acres and is zoned for industrial use;
- (2) The land is owned by an Oregon-based business entity that has been in continuous operation on a portion of the land for at least 40 years; and
- (3) The business entity employs more than 300 individuals on the land. [2005 c.844 §7]

Sec. 9. (2) Sections 5, 6 and 7 of this 2005 Act apply to an annexation of territory approved on or after March 1, 2005, and to an annexation of territory proposed on or after the effective date of this 2005 Act. [2005 c.844 §9(2)]

Sec. 11. (1) Sections 5, 6 and 7 of this 2005 Act are repealed on June 30, 2035.

(2) Notwithstanding subsection (1) of this section, unless this section is amended, sections 5 and 6 of this 2005 Act are repealed five years after June 30, 2035. [2005 c.844 §11]

222.110 [Repealed by 1957 c.613 §1 (222.111 enacted in lieu of 222.110)]

222.111 Authority and procedure for annexation. (1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

(6) The proposal for annexation may be voted upon by the electors of the city and of the territory simultaneously or at different times not more than 12 months apart.

(7) Two or more proposals for annexation of territory may be voted upon simultaneously; however, in the city each proposal shall be stated separately on the ballot and voted on separately, and in the territory proposed for annexation no proposal for annexing other territory shall appear on the ballot. [1957 c.613 §2 (enacted in lieu of 222.110); 1959 c.415 §1; 1967 c.624 §13; 1985 c.702 §7]

222.115 Annexation contracts; recording; effect. A contract between a city and a landowner containing the landowner's consent to eventual annexation of the landowner's property in return for extraterritorial services:

(1) Must be recorded; and

(2) When recorded, is binding on successors in interest in that property. [1991 c.637 §4; 2012 c.46 §§1,2]

222.118 Provision of city services to airport without requiring annexation. A city and an airport may enter into an agreement pursuant to which the city provides sewer and water services to the airport without requiring the annexation, or consent to eventual annexation, to the city of the territory on which the airport is situated. [2015 c.787 §1]

Note: 222.118 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 222 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

222.120 Procedure for annexation without election; hearing; ordinance subject to referendum. (1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Oregon Health Authority, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

(7) For the purpose of this section, ORS 222.125 and 222.170, "owner" or "landowner" means the legal owner of record or, where there is a recorded land contract which is in

force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel's land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land. [Amended by 1953 c.220 §2; 1955 c.51 §1; 1961 c.511 §1; 1967 c.624 §14; 1971 c.673 §2; 1985 c.702 §8; 1987 c.818 §11; 1993 c.18 §39; 2009 c.595 §180]

222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.130 Annexation election; notice; ballot title. (1) The statement summarizing the measure and its major effect in the ballot title for a proposal for annexation shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features. Notwithstanding ORS 250.035, the statement summarizing the measure and its major effect may not exceed 150 words.

(2) The notice of an annexation election shall be given as provided in ORS 254.095, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed.

(3) Whenever simultaneous elections are held in a city and the territory to be annexed, the same notice and publication shall fulfill the requirements of publication for the city election and the election held in the territory. [Amended by 1967 c.283 §1; 1979 c.317 §4; 1983 c.350 §33; 1995 c.79 §80; 1995 c.534 §10; 2007 c.154 §60]

222.140 [Repealed by 1979 c.317 §26]

222.150 Election results; proclamation of annexation. The city legislative body shall determine the results of the election from the official figures returned by the county clerk. If the city legislative body finds that the majority of all votes cast in the territory favors annexation and the city legislative body has dispensed with submitting the question to the electors of the city, the city legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [Amended by 1983 c.83 §23; 1983 c.350 §34; 1985 c.702 §9]

222.160 Procedure when annexation is submitted to city vote; proclamation of annexation. This section applies when the city legislative body has not dispensed with submitting the question of annexation to the electors of the city. If the city legislative body finds that a majority of the votes cast in the territory and a majority of the votes cast in the city favor annexation, then the legislative body, by resolution or ordinance, shall proclaim those annexations which have received a majority of the votes cast in both the city and the territory. The proclamation shall contain a legal description of each territory annexed. [Amended by 1983 c.350 §35; 1985 c.702 §10]

222.170 Annexation by consent before public hearing or order for election; proclamation of annexation. (1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a

statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

(3) If the city legislative body has not dispensed with submitting the question to the electors of the city and a majority of the votes cast on the proposition within the city favor annexation, or if the city legislative body has previously dispensed with submitting the question to the electors of the city as provided in ORS 222.120, the legislative body, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

(4) Real property that is publicly owned, is the right of way for a public utility, telecommunications carrier as defined in ORS 133.721 or railroad or is exempt from ad valorem taxation shall not be considered when determining the number of owners, the area of land or the assessed valuation required to grant consent to annexation under this section unless the owner of such property files a statement consenting to or opposing annexation with the legislative body of the city on or before a day described in subsection (1) of this section. [Amended by 1955 c.51 §2; 1961 c.511 §2; 1971 c.673 §1; 1973 c.434 §1; 1983 c.350 §36; 1985 c.702 §11; 1987 c.447 §117; 1987 c.737 §4; 1999 c.1093 §12]

222.173 Time limit for filing statements of consent; public records. (1) For the purpose of authorizing an annexation under ORS 222.170 or under a proceeding initiated as provided by ORS 199.490 (2), only statements of consent to annexation which are filed within any one-year period shall be effective, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city.

(2) Statements of consent to annexation filed with the legislative body of the city by electors and owners of land under ORS 222.170 are public records under ORS 192.410 to 192.505. [1985 c.702 §20; 1987 c.737 §5; 1987 c.818 §8]

Note: 222.173 to 222.177 were added to and made a part of ORS chapter 222 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.175 City to provide information when soliciting statements of consent. If a city solicits statements of consent under ORS 222.170 from electors and owners of land in order to facilitate annexation of unincorporated territory to the city, the city shall, upon request, provide to those electors and owners information on that city's ad valorem tax levied for its current fiscal year expressed as the rate per thousand dollars of assessed valuation, a description of services the city generally provides its residents and owners of property within the city and such other information as the city considers relevant to the impact of annexation on land within the unincorporated territory within which statements of consent are being solicited. [1985 c.702 §21; 1987 c.737 §6; 1987 c.818 §9]

Note: See note under 222.173.

222.177 Transmittal of annexation records to Secretary of State. When a city legislative body proclaims an annexation under ORS 222.125, 222.150, 222.160 or 222.170, the recorder of the city or any other city officer or agency designated by the city legislative body to perform the duties of the recorder under this section shall transmit to the Secretary of State:

(1) A copy of the resolution or ordinance proclaiming the annexation.

(2) An abstract of the vote within the city, if votes were cast in the city, and an abstract of the vote within the annexed territory, if votes were cast in the territory. The abstract of the vote for each election shall show the whole number of electors voting on the annexation, the number of votes cast for annexation and the number of votes cast against annexation.

(3) If electors or landowners in the territory annexed consented to the annexation under ORS 222.125 or 222.170, a copy of the statement of consent.

(4) A copy of the ordinance issued under ORS 222.120 (4).

(5) An abstract of the vote upon the referendum if a referendum petition was filed with respect to the ordinance adopted under ORS 222.120 (4). [1985 c.702 §4; 1987 c.737 §7; 1987 c.818 §10]

Note: See note under 222.173.

222.179 Exempt territory. The amendments to ORS 222.210, 222.230, 222.240 and 222.270 made by chapter 702, Oregon Laws 1985, do not apply in territory subject to the jurisdiction of a local government boundary commission. [1985 c.702 §27]

Note: 222.179 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 222 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

222.180 Effective date of annexation.

(1) The annexation shall be complete from the date of filing with the Secretary of State of the annexation records as provided in ORS 222.177 and 222.900. Thereafter the annexed territory shall be and remain a part of the city to which it is annexed. The date of such filing shall be the effective date of annexation.

(2) For annexation proceedings initiated by a city, the city may specify an effective date that is later than the date specified in subsection (1) of this section. If a later date is specified under this subsection, that effective date shall not be later than 10 years after the date of a proclamation of annexation described in ORS 222.177. [Amended by 1961 c.322 §1; 1967 c.624 §15; 1973 c.501 §2; 1981 c.391 §5; 1985 c.702 §12; 1991 c.637 §9]

222.183 Notice of annexation when effective date delayed for more than one year.

(1) If the effective date of an annexation is more than one year after the date of a proclamation of annexation, the city, through its recorder or other city officer or agency performing the duties of recorder under this section, shall send notice to the county clerk of each county within which the city is located. The notice shall be sent not sooner than 120 days and not later than 90 days prior to the effective date of the annexation.

(2) The notice described in subsection (1) of this section shall be in addition to any other notice or filing required under ORS 222.010 to 222.750. [1995 c.607 §67]

Note: 222.183 was added to and made a part of 222.010 to 222.750 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.185 [1971 c.673 §4; repealed by 1975 c.326 §5]

222.190 [Repealed by 1975 c.326 §5]

CONSOLIDATION OF ADJOINING AND NONADJOINING TERRITORIES**(Temporary provisions relating to consolidation of certain industrial lands)**

Note: Sections 9, 10 and 11, chapter 539, Oregon Laws 2005, provide:

Sec. 9. Section 10 of this 2005 Act is added to and made a part of ORS 222.210 to 222.310. [2005 c.539 §9]

Sec. 10. (1) A lot, parcel or tract may not be included in territory proposed to be consolidated to create a newly incorporated city or a consolidated city unless the owner of the lot, parcel or tract gives written consent to the incorporation or consolidation, if the lot, parcel or tract:

(a) Is zoned for industrial use or designated for industrial use zoning in an acknowledged comprehensive plan;

(b) Is land on which no electors reside, unless one or more electors living on-site are employed or engaged to provide security services for the industrial user of the land;

(c) Has an assessed value of more than \$2 million, including improvements; and

(d) Is in unincorporated Jackson County, either:

(A) Within the urban unincorporated community of White City, west of Oregon Route 62; or

(B) Within the urban growth boundary of the City of Medford, west of Oregon Route 99.

(2) After incorporation or consolidation of a city that includes a lot, parcel or tract described in subsection (1) of this section, the development rights that apply to the lot, parcel or tract under the industrial zoning classification applicable to the lot, parcel or tract when the city is incorporated or consolidated are retained and run with the lot, parcel or tract.

(3) As used in this section, "urban unincorporated community" means an unincorporated community that:

(a) Includes at least 150 permanent residential dwelling units;

(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;

(c) Includes areas served by a community sewer system; and

(d) Includes areas served by a community water system. [2005 c.539 §10]

Sec. 11. Sections 2, 4, 6, 8 and 10 of this 2005 Act are repealed June 30, 2016. [2005 c.539 §11]

222.210 Authority to consolidate adjoining and nonadjoining cities or territories; additional method of annexation; limitation.

(1) An incorporated city may be created from adjoining or nonadjoining incorporated cities, from an incorporated city and adjoining or nonadjoining unincorporated territory, or from both, after proceedings had as required by ORS 222.210 to 222.310. The legislature expressly declares that those sections do not repeal or amend any other law or laws providing for the incorporation of cities, and that those sections are enacted for the purpose of providing an additional procedure for the incorporation of cities. The unincorporated territory may consist of contiguous or noncontiguous areas.

(2) Notwithstanding any other provision of ORS 222.210 to 222.310, no city shall be created under ORS 222.210 to 222.310 that contains any noncontiguous area which is separated from the rest of the territory of the city by a distance that is nowhere less than or equal to three miles. If a petition filed under ORS 222.230 (2) proposes creation of a city containing noncontiguous areas separated by a distance of more than three miles, the affected city governing bodies shall so declare at the joint convention held under ORS 222.230 (4) and shall cancel any further proceedings related to the petition. If a consolidated city with such noncontiguous areas results from an election called under ORS 222.250 or 222.275, the consolidated city shall consist only of the most populous city included in the consolidated city and those cities or unincorporated areas in which the majority of votes cast favored creation of the

consolidated city and which lie not more than three miles from the contiguous area composed of the most populous city and any other city or unincorporated area in which the majority of votes cast favored creation of the consolidated city. [Amended by 1971 c.761 §1; 1983 c.350 §37; 1985 c.702 §22; 1989 c.92 §38; 1997 c.541 §390]

222.220 Initiation of proceedings; signatures on petitions. Proceedings to create an incorporated city under ORS 222.210 to 222.310 may be initiated by petition signed by not less than 10 percent of the electors of each incorporated city to be included within the proposed city. If it is proposed to include one or more unincorporated areas in the proposed city, the petition shall be signed by not less than 10 percent of the electors registered in each such area at the closing of the registration books by the county clerk at the close of registration preceding the last general election. The areas may be contiguous with one another. [Amended by 1971 c.761 §2; 1983 c.83 §24]

222.225 Economic feasibility statement required; contents. When a petition to create a city under ORS 222.210 to 222.310 is filed with the clerk or recorder of a city under ORS 222.230, an economic feasibility statement concerning the proposed city described in the petition shall also be filed with the clerk or recorder. The economic feasibility statement shall be prepared by the petitioners and, if applicable, shall form the basis for the proposed permanent rate limit for operating taxes required by ORS 222.230 (2). The economic feasibility statement shall contain:

(1) A description of the services and functions to be performed or provided by the proposed city;

(2) An analysis of the relationship between those services and functions and other existing or needed government services; and

(3) A proposed first year line item operation budget and a projected third year line item operating budget for the new city that demonstrate its economic feasibility. [1989 c.92 §33; 1997 c.541 §355]

222.230 Form and contents of petition; filing; meeting of city governing bodies.

(1) Before circulating a petition to create a city from adjoining or nonadjoining cities or unincorporated territory, the petitioners shall file with the county clerk of the county in which the proposed city lies or, should it lie in more than one county, to the county clerk of the county in which the largest part of its territory lies, a petition for consolidation in a form prescribed by rule of the Secretary of State. If the economic feasibility statement required by ORS 222.225 is sub-

mitted with the petition, the county clerk shall immediately date and time stamp the prospective petition and shall authorize the circulation of the petition. The county clerk shall retain the prospective petition and economic feasibility statement and shall immediately send a copy of the prospective petition to each city included in the proposed consolidation.

(2) The petition shall be addressed to the governing bodies of the cities to be included in the proposed city. The petition shall state the name of the city, which may be, but need not be, the name of any of the cities to be included in the city. If it is proposed to include one or more unincorporated areas, the petition shall describe the boundaries of each of them, in addition to designating the incorporated cities to be included in the proposed city. The petition may be filed in the office of the clerk or recorder of any of the cities to be included in the proposed city. However, a petition shall not be accepted for filing unless all the signatures on the petition were obtained within the one-year period immediately following the date on which the petition was filed under subsection (1) of this section.

(3) The petition shall state the proposed permanent rate limit for operating taxes for the city that is to be created. The proposed permanent rate limit shall be the rate that would produce the same tax revenue as the existing city or cities would have cumulatively produced within the city or cities' territorial boundaries were the consolidation not to take effect, and not taking into account any applicable statutory rate limit on operating taxes.

(4) When a petition to create a city pursuant to ORS 222.210 to 222.310 contains the required number of signatures and has been so filed, the governing bodies of the cities to be included in the proposed city shall meet in joint convention at the usual place of meeting of the governing body of that one of the cities having the largest population as shown by the last federal census, as soon after the filing of the petition as is convenient, but not more than 20 days after the filing of the petition. At that meeting the governing bodies shall examine the petition and determine:

(a) Whether it is in proper form and contains the required number of qualified signers; and

(b) Whether the incorporation of the consolidated city proposed in the petition complies with goals adopted under ORS chapters 195, 196 and 197. [Amended by 1971 c.761 §3; 1985 c.702 §23; 1989 c.92 §34; 1997 c.541 §356; 2001 c.672 §6]

222.240 Approval of petition; appointment of charter commission; employment of assistance; functions. If the governing bodies find that the petition is in proper form, contains the required signatures and proposes an incorporation that complies with goals adopted under ORS chapters 195, 196 and 197, the governing body of each of the cities to be included in the proposed city shall approve the petition and appoint two residents of each of the cities as the members of a charter commission to prepare a charter for the proposed city to be submitted to the electors for approval or rejection at the same election at which is submitted the question of the creation of the proposed city. The charter commission may employ at the expense of the cities such legal and other assistance as it considers advisable to assist it in the preparation of the charter or the performance of its duties, and the expense shall be equally borne by the cities. If the petitions provide that one or more unincorporated areas shall be included in the proposed city, the governing body of the county within which the largest portion of all such areas lies shall appoint to the charter commission two electors residing in those areas. After the commission is selected, it shall prepare a charter for the proposed city within 60 days after the commission has been appointed. [Amended by 1971 c.761 §4; 1985 c.702 §24; 2001 c.672 §7]

222.245 [1971 c.761 §13; repealed by 1989 c.92 §39]

222.250 Joint convention of governing bodies; election on consolidation, charter and tax rate limit; date; functions of county court; ballot title. (1) After the charter commission has prepared and adopted a charter, the secretary of the charter commission shall file copies of the charter, certified as correct by the secretary or two or more members of the commission, with the governing bodies of each of the incorporated cities to be included in the proposed city. Within 30 days after the filing the governing bodies of the cities shall meet in joint convention, at the usual place of meeting of the governing body of the city having the largest population as shown by the last federal census, to adopt a ballot title for the question of consolidation and adoption of a city charter and tax base. The ballot title shall comply with the requirements of ORS 250.035. The permanent rate limit for operating taxes that is submitted to the electors shall be the permanent rate limit included in the petition for consolidation filed under ORS 222.230.

(2) The election shall be held on the date of the next primary election or general election that is not earlier than the 90th day after the filing. The election shall be called and held for the purpose of submitting the

following question to the electors of each incorporated city and of each unincorporated area to be included in the proposed city:

(a) Whether an incorporated city shall be created consisting of the largest city proposed to be included therein, of each other incorporated city whose electors vote to create the proposed city, and of each unincorporated area in which the electors vote to create the proposed city;

(b) Whether the charter proposed by the charter commission shall be adopted as the charter for the city; and

(c) Whether the proposed permanent rate limit included in the petition for consolidation filed under ORS 222.230 shall be adopted as the proposed permanent rate limit of the new city.

(3) If the governing bodies cannot agree at the joint convention upon a date and a ballot title for the election, the county court of the county in which is located the administrative office of the city having the largest population of all cities proposed to be included in the consolidated city, by resolution duly adopted by the county court, shall determine a date and adopt a ballot title. The election in that case shall be called by the county court for the purposes provided in the petitions and ORS 222.210 to 222.310.

(4) The statement summarizing the measure and its major effect in a ballot title for an election under this section shall include a general description of the boundaries of the proposed city. The description shall use streets and other generally recognized features and name the cities proposed to be included in the consolidated city. Notwithstanding ORS 250.035, the statement summarizing the measure and its major effect shall not exceed 150 words.

(5) Not later than the 61st day before the date of the election, the officer performing the duties of clerk of the joint convention or the county court shall file the ballot title with the county clerk of the county in which is located the administrative office of the city having the largest population of all cities proposed to be included in the consolidated city. The ballot title may be challenged in the manner provided for county measures in ORS 250.195. [Amended by 1971 c.761 §5; 1979 c.316 §11; 1983 c.350 §38; 1985 c.565 §34; 1989 c.92 §35; 1995 c.79 §81; 1995 c.534 §11; 1995 c.712 §93; 1997 c.541 §357]

222.260 Ordinance calling election. After the date and other election details have been determined, the governing body of each of the cities shall enact an ordinance calling an election as required by this section and ORS 222.250 for the purposes specified. A copy of the ordinance shall be filed with the county clerk of each county in which any

territory included in the proposed consolidation lies. [Amended by 1967 c.283 §2; 1971 c.761 §6; 1983 c.350 §39; 1989 c.92 §36]

222.265 Conduct of election. (1) Except as provided in this section, ORS chapters 246 to 260 govern the conduct of an election called under ORS 222.250 or 222.275.

(2) The chief elections officer for the purpose of conducting any election called under ORS 222.250 or 222.275 shall be the county clerk of the county in which is located the administrative office of the city having the largest population of all cities proposed to be included in the consolidated city.

(3) If the proposed consolidation includes one or more unincorporated areas, the notice of the election called under ORS 222.250 shall include a map indicating the boundaries of each such area and indicating each incorporated city proposed to be included in the consolidated city. [1983 c.350 §41]

222.270 Canvass of votes; joint convention of governing bodies; proclamation; report to Secretary of State; cost of election. (1) The chief elections officer shall canvass separately the votes cast in each city and in each unincorporated area on the question of consolidation and adoption of a city charter and permanent rate limit for operating taxes. The chief elections officer shall deliver a certified copy of the abstracts to the governing body of each of the cities.

(2) Not later than the 10th day after the chief elections officer has delivered the certified copies of the abstracts under subsection (1) of this section, the governing bodies of each of the cities to be included in the proposed city shall meet in joint convention at the usual place of meeting of the governing body of the city with the largest population as shown by the last federal census.

(3) The joint convention shall determine from the abstracts the results of the election on the question. The joint convention shall make an order proclaiming creation of the consolidated city and shall enter the order upon the joint convention's minutes if a majority of the votes cast in the most populous city and a majority of the votes cast in another city or an unincorporated area proposed to be included in the proposed city favor creation of the city.

(4) Except as provided in ORS 222.210 (2), the consolidated city shall consist of the most populous city proposed to be included therein, each other city whose electors vote in favor of creating the consolidated city and each unincorporated area whose electors so vote. Its charter shall be the charter prepared by the charter commission and its permanent rate limit for operating taxes shall

be the rate limit submitted to the electors at the election held under ORS 222.250 and 222.260.

(5) The officer performing the duties of clerk of the joint convention shall deliver to the Secretary of State a certified copy of the order proclaiming the election results and a certified copy of the charter adopted as the charter for the proposed city.

(6) If a consolidated city is created under subsection (3) of this section, the consolidated city shall pay the total cost of the election. If a consolidated city is not so created:

(a) Each city that would have been included in the proposed city shall pay a part of the total cost of holding the election on the proposed consolidation equal to the proportion that the number of persons registered to vote in the city holds to the number of persons registered to vote in all cities and unincorporated areas that would have been included in the proposed city; and

(b) Each county in which lies an unincorporated area that would have been included in the proposed city shall pay a part of the total cost of the election equal to the proportion that the number of persons registered to vote in the unincorporated area holds to the number of persons registered to vote in the total area that would have been included in the proposed city. [Amended by 1971 c.761 §7; 1981 c.173 §9; 1983 c.350 §42; 1985 c.702 §25; 1989 c.92 §37; 1997 c.541 §358]

222.275 Elections for consolidation of certain areas or cities. (1) Electors of a city or area proposed to be included in a consolidated city may request a second election on the question of consolidation by filing a petition requesting the election as provided in this section, if:

(a) The majority of votes cast in the first election in the city or area for which the second election is requested was in favor of consolidation but the city or area is not contiguous to any other portion of the consolidated city; or

(b) The majority of votes cast in the election in the city or area is against consolidation but the city or area is contiguous to the consolidated city.

(2) Except as provided in subsection (4) of this section, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under ORS 250.165 to 250.235. The petition must be signed by not less than 25 percent of the electors of the city or area.

(3) Except as provided in subsection (4) of this section and notwithstanding subsection (2) of this section, if ORS 250.155 makes ORS 250.165 to 250.235 inapplicable to a

county, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the county charter or an ordinance adopted under the county charter.

(4) The petition must be filed with the county clerk of the county within which the largest portion of the city or area lies, not later than the 60th day after the date of the first election. The county clerk of the county in which the petition is filed immediately shall verify the signatures on the petition and forward the petition to the chief elections officer.

(5) If a petition is filed as provided in this section, the chief elections officer shall call a second election on the question of consolidation in the city or area on the next available election date in ORS 221.230 that is not sooner than the 61st day after the date on which the chief elections officer receives the verified petition.

(6) The results of the election shall be determined according to ORS 222.270. [1971 c.761 §11; 1979 c.316 §12; 1983 c.83 §25; 1983 c.350 §43; 1987 c.707 §5; 1989 c.923 §10; 1991 c.71 §6; 1993 c.713 §55]

222.280 Election of officers; effective date of incorporation; certain annexations prohibited. (1) Not later than the 30th day after an election held under ORS 222.250, or after an election held under ORS 222.275, if such an election is held, the chief elections officer shall call a special election in the consolidated city for the purpose of electing the officers required by the charter adopted by the electors. The election shall be held on a date specified in ORS 221.230 that is not sooner than the 90th day after the date on which the election is called.

(2) The first city officers shall take office on the 10th day following the date on which their elections are proclaimed.

(3) On the date on which the first city officers take office, or at whatever subsequent time the charter of the consolidated city specifies, the city shall be one city, with the rights and privileges conferred by its charter adopted under ORS 222.210 to 222.310 and the laws of this state.

(4) A city incorporated under ORS 222.210 to 222.310 may not exercise the power granted by ORS 222.750 as to land surrounded by the corporate limits or boundaries of the city at the time of incorporation. [Amended by 1971 c.761 §8; 1983 c.350 §44]

222.290 Officers assume duties under charter. At whatever time the charter of the consolidated city specifies the officers elected at the election referred to in ORS 222.280 shall be entitled to enter upon the duties of their respective offices, upon qualifying

therefor in accordance with the charter, and shall hold their respective offices for whatever terms are prescribed by the charter. [Amended by 1971 c.761 §9]

222.295 Effect of consolidation; records, assets and uncollected taxes of consolidating cities transferred to consolidated city. Upon the effective date of the consolidation, the consolidated city shall succeed to all the assets and become charged with all the liabilities and obligations of all cities included in the consolidated city, except as the charter of the consolidated city provides to the contrary. The officers of the consolidating cities shall forthwith deliver to the officers of the consolidated city the assets and records of the consolidating cities. Uncollected taxes theretofore levied by the consolidating cities shall become the property of the consolidated city and shall be delivered to it by the county treasurer upon collection. [1971 c.761 §12]

222.300 Ordinances of former incorporated units continued in effect; initiation of civil and criminal actions. (1) The ordinances in force in the previously incorporated cities at the time of the creation of the newly formed incorporated city by virtue of ORS 222.210, so far as the ordinances are not inconsistent with the charter adopted for the newly formed municipal corporation, shall continue in effect within the limits of the newly formed municipal corporation and shall be deemed its ordinances subject to the provisions of said charter and subject to modification, amendment or repeal by the council or other governing body of the newly created municipal corporation.

(2) From the date the newly formed municipal corporation comes into existence, all complaints and prosecutions for crimes committed or ordinances violated and all suits or causes of action arising within the territory of the municipal corporation prior to its creation may be instituted in said incorporated city with the same effect as if it had been in existence prior to the violations, subject however, to the provisions of the charter of the newly formed municipal corporation.

222.310 Construction of ORS 222.210 to 222.310; substantial compliance sufficient. ORS 222.210 to 222.310 shall be construed liberally, and substantial compliance with the provisions of those sections shall be sufficient. [Amended by 1983 c.350 §45]

222.410 [Repealed by 1969 c.494 §29]

222.420 [Repealed by 1969 c.494 §29]

222.430 [Amended by 1967 c.283 §3; repealed by 1969 c.494 §29]

222.440 [Repealed by 1969 c.494 §29]

222.450 [Repealed by 1969 c.494 §29]

WITHDRAWAL OF TERRITORY

222.460 Procedures for withdrawal of territory; contents of resolution; hearing; election; taxes and assessments. (1) Except as expressly prohibited by the city charter, when the legislative body of a city determines that the public interest will be furthered by a withdrawal or detachment of territory from the city, the legislative body of the city, on its own motion, may order the withdrawal of territory as provided in this section.

(2) A withdrawal of territory from the city shall be initiated by a resolution of the legislative body of the city.

(3) The resolution shall:

(a) Name the city and declare that it is the intent of the legislative body of the city to change the boundaries of the city by means of a withdrawal of territory;

(b) Describe the boundaries of the affected territory; and

(c) Have attached a county assessor's cadastral map showing the location of the affected territory.

(4) Not later than 30 days after adoption of the resolution, the legislative body of the city shall hold a public hearing at which the residents of the city may appear and be heard on the question of the withdrawal of territory. The legislative body of the city shall cause notice of the hearing to be given in the manner required under ORS 222.120 (3).

(5) After receiving testimony at the public hearing, the legislative body of the city may alter the boundaries described in the resolution to either include or exclude territory. If the legislative body of the city still favors the withdrawal of territory pursuant to the resolution, as approved or modified, it shall enter an order so declaring. The order shall set forth the boundaries of the area to be withdrawn. The order shall also fix a place, and a time not less than 20 nor more than 50 days after the date of the order, for a final hearing on the resolution. The order shall declare that if written requests for an election are not filed as provided by subsection (6) of this section, the legislative body of the city, at the time of the final hearing, will adopt a resolution or ordinance detaching the territory from the city.

(6) An election shall not be held on the question of withdrawal of the affected territory from the city unless written requests for an election are filed at or before the hearing by not less than 15 percent of the electors or 100 electors, whichever is the lesser number, registered in the territory proposed to be withdrawn from the city.

(7) At the time and place set for the final hearing upon the resolution for withdrawal, if the required number of written requests for an election on the proposed withdrawal have not been filed, the legislative body of the city shall, by resolution or ordinance, declare that the territory is detached from the city.

(8) If the required number of requests for an election are filed on or before the final hearing, the legislative body of the city shall call an election in the city upon the question of the withdrawal of the affected territory.

(9) If an election is called and a majority of the votes cast at the election is in favor of the withdrawal of the designated area from the city, the legislative body of the city shall, by resolution or ordinance, declare that the territory is detached from the city. If the majority of the votes cast is against the withdrawal, the legislative body of the city shall enter an order declaring the results of the election and that no withdrawal shall occur.

(10) The described area withdrawn shall, from the date of entry of the order, be free from assessments and taxes levied thereafter by the city. However, the withdrawn area shall remain subject to any bonded or other indebtedness existing at the time of the order. The proportionate share shall be based on the assessed valuation, according to the assessment roll in the year of the levy, of all the property contained in the city immediately prior to the withdrawal. [1985 c.702 §2; 1989 c.1063 §13]

Note: 222.460 and 222.465 were added to and made a part of ORS chapter 222 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

222.465 Effective date of withdrawal from domestic water supply district, water control district or sanitary district. Notwithstanding any provision of this chapter or ORS chapter 199 which provides a different effective date, when territory is withdrawn by a city from a domestic water supply district organized under ORS chapter 264, a water control district organized under ORS chapter 553 or a sanitary district organized under ORS chapter 450, if the ordinance, annexation or incorporation that results in the withdrawal is enacted or approved after March 31 in any year, the effective date of the withdrawal of territory shall be July 1 in the following year. However, if the ordinance, annexation or incorporation that results in the withdrawal is enacted or approved before April 1 in any year, the effective date of the withdrawal of territory shall be July 1 in the same year. When less than the entire area of a domestic water supply district organized under ORS chapter 264, a water control district organ-

ized under ORS chapter 553 or a sanitary district organized under ORS chapter 450 is annexed by or incorporated into a city, the district shall, for purposes of administration, operation and the collection of service charges, continue to operate that portion of the district separately until the effective date of the withdrawal of territory as determined under this section. This section does not limit any agreement between a city and a district under ORS 222.530 (5), 222.540 (4) or 222.560 (4). [1985 c.702 §4a]

Note: See note under 222.460.

(Temporary provisions relating to withdrawal of tracts from City of Damascus)

Note: Section 1, chapter 75, Oregon Laws 2014, provides:

Sec. 1. (1) As used in this section:

(a) “Contiguous lots or parcels of land under the same ownership” includes lots or parcels that are separated only by a public or private right of way.

(b) “Located on the boundary of the city” includes the circumstance in which a tract is:

(A) Contiguous to the corporate boundary of the city or separated from the corporate boundary only by a public right of way or a stream, bay, lake or other body of water, as described in ORS 222.111;

(B) Separated from the corporate boundary only by real property that is owned by a public body, as defined in ORS 174.109; or

(C) Separated from the corporate boundary only by real property that the owner of the tract is entitled to use pursuant to an easement.

(c) “Same ownership” includes ownership, singly or in any combination, by an individual, other individuals related to the individual by blood, marriage or adoption, and entities owned, directly or indirectly, by the individual or such related individuals.

(d) “Tract” means one or more contiguous lots or parcels of land under the same ownership and includes any portion of the contiguous lots or parcels of land under the same ownership less than the whole.

(2) Notwithstanding ORS 222.460, the owner of a tract within the corporate boundaries of the City of Damascus may withdraw the tract from the city if:

(a) The comprehensive plan and land use regulations of the city are not acknowledged, as required under ORS 197.757, when the owner makes the filing for withdrawal required under subsection (3) of this section; and

(b) Any portion of the tract is located on the boundary of the city.

(3) To withdraw a tract from the City of Damascus under this section, the owner must file with the mayor and the governing body of the city, in person or by registered mail, return receipt requested, with a copy to Metro and the Department of Land Conservation and Development:

(a) A request to withdraw the tract from the city;

(b) A copy of a deed, preliminary title report, tax record or similar document showing ownership of the tract;

(c) A legal description of the tract to be withdrawn; and

(d) A copy of the cadastral map maintained by the county assessor that shows the location of the tract. [2014 c.75 §1; 2015 c.562 §1]

Note: Section 2, chapter 562, Oregon Laws 2015, provides:

Sec. 2. (1) For purposes of this section, the question of whether the withdrawal of a tract will cause an undue hardship on the continued operation of the City of Damascus must be based on the operation of the city at the time the request for withdrawal of the tract is filed under section 1 (3), chapter 75, Oregon Laws 2014.

(2)(a) Within 10 days after receipt of a request for withdrawal filed under section 1 (3), chapter 75, Oregon Laws 2014, the governing body of the City of Damascus shall cause notice of a public hearing on the withdrawal of the tract to be held within 30 days after receipt of the request.

(b) For two successive weeks before the date of the public hearing, the notice shall be published once each week in a newspaper of general circulation in the city and posted in four public places in the city.

(3) At the public hearing, the public may appear and be heard on the questions of whether:

(a) The requirements of section 1 (2), chapter 75, Oregon Laws 2014, have been met with respect to the tract; and

(b) The withdrawal of the tract will cause an undue hardship on the continued operation of the City of Damascus.

(4)(a) Within 30 days after receiving testimony at the public hearing, the governing body of the City of Damascus shall consider and make determinations on the questions described in subsection (3) of this section.

(b) If the governing body determines that the requirements of section 1 (2), chapter 75, Oregon Laws 2014, have been met and the withdrawal of the tract will not cause an undue hardship on the continued operation of the city, the governing body shall:

(A) Adopt an ordinance or resolution declaring the tract withdrawn from the city and causing the corporate boundaries of the city to be amended to reflect the withdrawal.

(B) Cause the amended corporate boundaries of the city to be reported to:

(i) The owner of the tract;

(ii) Metro;

(iii) The county clerk and county assessor of Clackamas County, in the manner required of a city under ORS 222.010; and

(iv) The Department of Revenue, as required under ORS 308.225.

(c) If the governing body determines that the requirements of section 1 (2), chapter 75, Oregon Laws 2014, have not been met or the withdrawal of the tract will cause an undue hardship on the continued operation of the city, the governing body shall:

(A) Adopt an ordinance or resolution rejecting the withdrawal of the tract from the city.

(B) Cause the determination to be reported to:

(i) The owner of the tract; and

(ii) Metro.

(d) If the governing body does not make a determination on the questions described in subsection (3) of this section within 30 days after receiving testimony at the public hearing, the withdrawal shall be deemed complete and, upon request of the owner of the tract, the governing body shall cause:

(A) The corporate boundaries of the city to be amended to reflect the withdrawal.

(B) The amended corporate boundaries of the city to be reported to:

- (i) The owner of the tract;
- (ii) Metro;

(iii) The county clerk and county assessor of Clackamas County, in the manner required of a city under ORS 222.010; and

(iv) The Department of Revenue, as required under ORS 308.225.

(5) The withdrawal of a tract under this section:

(a) Is not a land use decision or a limited land use decision subject to the exclusive jurisdiction of the Land Use Board of Appeals under ORS 197.805 to 197.855.

(b) Is not subject to referral to the electors.

(c) Is not subject to ORS 222.040.

(6)(a) A determination by the governing body under subsection (4)(b) or (c) of this section, or the withdrawal of a tract due to the failure of the governing body to make a timely determination under subsection (4)(d) of this section, may be appealed to the circuit court of the county in which the City of Damascus is located.

(b) The court shall hear the matter de novo.

(c) The court may reverse or remand the determination of the governing body or the withdrawal of the tract due to the failure of the governing body to make a timely determination only if the court finds that:

(A) The withdrawn tract did not meet the requirements for withdrawal under section 1 (2), chapter 75, Oregon Laws 2014;

(B) The withdrawal was clearly in error;

(C) There is a basis to vacate the withdrawal for the reasons for which an arbitration award may be vacated, modified or corrected under ORS 36.705 (1)(a) to (d) or 36.710; or

(D) The withdrawal was unconstitutional.

(7) The City of Damascus may not annex a tract withdrawn from the city under this section for a period of 10 years after the withdrawal unless the owner of the tract submits a petition to the governing body of the city seeking annexation of the tract. [2015 c.562 §2]

Note: Section 4, chapter 75, Oregon Laws 2014, provides:

Sec. 4. Section 1, chapter 75, Oregon Laws 2014, and section 2 of this 2015 Act [section 2, chapter 562, Oregon Laws 2015], are repealed on January 2, 2025. [2014 c.75 §4; 2015 c.562 §3]

ANNEXATION OF PUBLIC SERVICE DISTRICTS

222.510 Annexation of entire district; transfer of assets, liabilities and functions to city; exceptions. (1) Whenever the entire area of a rural fire protection district, a water district, including a domestic water supply corporation, a park and recreation district, a highway lighting district, a county service district, a special road district, a road assessment district or a sanitary district or authority, lawfully organized and existing, becomes incorporated in or annexed to a city in accordance with law, the district is extinguished and the city shall, upon the effective date of the incorporation or annexation, succeed to all the assets and become charged with all the liabilities, obligations and functions of the district. The district officers

shall forthwith deliver to the city officers the district assets and records. Uncollected taxes theretofore levied by the district become the property of the city and must be delivered to it by the county treasurer upon collection.

(2) Notwithstanding subsection (1) of this section, a rural fire protection district, a water district, including a domestic water supply corporation, a park and recreation district, a highway lighting district, a county service district, a special road district, a road assessment district or a sanitary district or authority, lawfully organized and existing, the entire area of which becomes incorporated in a city, may continue to provide services if the continuation is proposed by petitioners in a petition for incorporation that is subsequently approved by voters in an incorporation election. At any time after incorporation, a city may cause a district to be extinguished and succeed to all the assets and become charged with all the liabilities, obligations and functions of the district if:

(a) The governing body of the city holds a public hearing on the question of the extinguishment, hears objections to the extinguishment at the hearing, determines that the extinguishment is in the best interest of the city and adopts an ordinance extinguishing the district;

(b) After the hearing, the governing body of the city refers the ordinance extinguishing the district to the electors of the city; and

(c) The majority of all votes cast favors that the district be extinguished.

(3) For the public hearing required in subsection (2)(a) of this section, the governing body shall fix a date, time and place for the hearing and cause notice of the date, time, place and purpose of the hearing to be published once each week for two successive weeks prior to the date of the hearing in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period. [Amended by 1955 c.471 §1; 1963 c.347 §1; 1965 c.509 §1; 1967 c.365 §1; 1967 c.624 §16; 1969 c.78 §1; 1971 c.13 §5; 2007 c.420 §1; 2010 c.41 §1]

222.520 Annexation of less than entire district; assumption of obligations by city conditional. (1) Whenever a part less than the entire area of a district named in ORS 222.510 becomes incorporated as or annexed to a city in accordance with law and the city, after the incorporation or annexation, will provide for the service to the part of the district that the district provided before the incorporation or annexation, the city may cause the part to be withdrawn from the district in the manner set forth in ORS 222.120 or at any time after the incorporation or annexation in the manner set forth in ORS 222.524. Until withdrawn, the part of

the district incorporated as or annexed to the city shall continue to be a part of the district.

(2) The part withdrawn pursuant to subsection (1) of this section is not relieved from liabilities and indebtedness previously contracted by the district. For the purposes of paying the liabilities and indebtedness of the district, property in the part withdrawn shall continue to be subject to assessment and taxation uniformly with property in the area remaining in the district. The city of which it became a part shall, however, assume such obligations if the obligations assumed do not bring the total of the city's obligations above any applicable limitations prescribed by statute. When the city assumes the obligations it shall be liable to the district for one of the following, at the option of the city:

(a) The amount of taxes that otherwise would be extended each year for the obligations against the property in the part withdrawn; or

(b) Payment annually, as the bonds of the district that were outstanding on the effective date of the withdrawal mature, of the same proportion of the outstanding bonds, and the interest on the bonds, as the assessed valuation of the part withdrawn bears to the assessed valuation of the entire district on the effective date of the withdrawal. After the city agrees to make payments under this paragraph, neither the city nor the part withdrawn shall be charged by the district with any future liabilities, obligations or functions of the district. [Amended by 1955 c.471 §2; 1957 c.401 §1; 1963 c.347 §2; 1965 c.509 §2; 1967 c.624 §17; 1985 c.702 §13; 2013 c.277 §1]

222.524 Procedure for withdrawal of part of district from district. (1) If as authorized by ORS 222.520 the governing body of the city elects to cause the withdrawal from a district named in ORS 222.510 of that part of such district theretofore incorporated in or annexed to the city, it shall hold a public hearing on the question of such withdrawal. At the hearing, the governing body of the city shall hear objections to the withdrawal and shall determine whether such withdrawal is for the best interest of the city.

(2) The governing body shall fix a date, time and place for the hearing and cause notice of the date, time, place and purpose of the hearing to be published once each week for two successive weeks prior to the date of the hearing in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

(3) After the hearing, the governing body of the city may by ordinance declare that the part of the district which was theretofore

incorporated as or annexed to the city is withdrawn from the district.

(4) The ordinance referred to in subsection (3) of this section is subject to referendum.

(5) The city may withdraw from all of such districts at the same time in one proceeding under this section or may withdraw from each district in separate proceedings at different times.

(6) The public hearing and ordinance referred to in this section may be the same as the public hearing and ordinance in ORS 222.120. [1957 c.401 §3; 1963 c.347 §3; 1965 c.509 §3; 1985 c.702 §14]

222.528 Territory withdrawn from district not liable for certain obligations. The liabilities and indebtedness for which a part of a district named in ORS 222.510 remains liable, upon withdrawal by annexation or incorporation as provided in ORS 222.120 or 222.520, shall not include:

(1) Current operating expenses of the district beyond the fiscal year in which the withdrawal is effective.

(2) Special tax levies, bond indebtedness or debt service obligations approved in the district subsequent to the withdrawal.

(3) Any amount which is due beyond the fiscal year in which the withdrawal is effective by reason of a contract for services between the district and another district or municipality where the amount due varies in each fiscal year according to the assessed valuation of the district. [1957 c.573 §2; 1963 c.347 §4; 1965 c.509 §4; 1985 c.702 §15]

222.530 Procedure for division of assets on withdrawal of part of district; arbitration and award. (1) Within 90 days from the date of such withdrawal of part of a rural fire protection district, a highway lighting district, a special road district or a park and recreation district, the governing bodies of the city and the district shall agree upon an equitable division and disposal of the assets of the district. The plan of division of assets shall be arrived at after giving consideration to the assessed valuation of the whole district and the part of it withdrawn, the types of assets, and their location and intended use. However, the plan for division of assets of a rural fire protection district may in no case divide the assets so that the remaining part of the district would have a less favorable fire insurance grade classification, according to filings made pursuant to ORS 737.205, than that which the district had at the time of the withdrawal.

(2) The remainder of such district shall continue in existence as a district, but may dissolve in the manner provided in the applicable district statutes. After withdrawal, the

services for the remaining part may be performed by the remainder of the district acting independently as such; or, such services may be performed by contract with the city, or by agreement of the city directly with the property owners of the remainder if the district determines upon dissolution. If dissolution is determined upon, and the city agrees to furnish service to the remainder of the district, all assets of the district shall become the property of the city.

(3) If an agreement pursuant to subsection (1) of this section cannot be arrived at within 90 days from the date of withdrawal, upon the request of any party in interest, the county court or board of county commissioners of the county in which the property is situated shall submit the matter to arbitration under ORS 36.600 to 36.740.

(4) Notice under ORS 36.685 need be made only upon parties in interest who have participated in the arbitration proceedings. An appeal from the award may be taken only to the circuit court for the county in which the property withdrawn is located, subject to further appeal as provided in ORS chapter 19. The functions of the district for the entire preexisting area thereof shall be continued by the district until the final determination of such agreement or arbitration.

(5) The governing bodies of the city and a rural fire protection district, a special road district or a park and recreation district, as the case may be, may enter into a binding agreement for the joint operation of the fire protection or park and recreation facilities of each that will be beneficial to and equitable for the inhabitants and property owners of each after the withdrawal of part of such districts. [Amended by 1955 c.471 §3; 1957 c.401 §4; 1963 c.347 §5; 1965 c.509 §5; 1969 c.690 §27; 1971 c.13 §6; 2003 c.598 §38]

222.540 Procedure for division of installations on withdrawal of part of water district; appeal; joint operations. (1) When a part of a water district, including a domestic water supply corporation, is withdrawn, the district shall, by action of its governing body, turn over to the city, of which the withdrawn area becomes a part, its water mains, service installations, structures, facilities, improvements and other property in the area withdrawn from the district that are not necessary for the operation of the remainder of the water control or water supply system of the district. All water mains, service installations, reservoirs, structures, facilities, improvements and other property that are necessary for the district to continue maintenance and operation of its water control or water supply system remain the property of the district, regardless of

whether they are located within or without the city. If the city is not satisfied with the property division made by the district governing body, or if, within 90 days from the effective date of the withdrawal, the district governing body has failed to make a division, the city's governing body may request the county court or board of county commissioners of the county in which the property is situated to decide upon the division.

(2) After giving 10 days' notice and an opportunity to be heard to the district governing body, the court or board shall, in accordance with the standards of guidance provided in this section for the district governing board, divide the property.

(3) The decision of the county court or board of commissioners is binding upon all parties in interest, except that an appeal may be taken therefrom for abuse of discretion in arriving at the decision to the circuit court of the county in which the property withdrawn is located within 30 days from the announcement of the decision. The functions of the district must be continued in the entire preexisting area by the district until the final determination of the division of property.

(4) This section does not prevent the governing bodies of the city and the district from arriving at a binding agreement for a joint operation of the water or other facilities of each that will be beneficial to and equitable for the inhabitants and property owners of each after the withdrawal of part of the water district. [Amended by 1965 c.509 §6; 2007 c.420 §2]

222.550 Withdrawal of greater portion of water district; dissolution optional; transfer of property to city. When the greater portion of a water district including a domestic water supply corporation or a water control district is thus withdrawn, measured by the comparative assessed valuations of the portion withdrawn and the portion remaining in the district, the remainder of the district may dissolve in the manner provided for water districts. If dissolution is determined upon and the city agrees to furnish water or other facilities theretofore provided by the water district to the remainder of the district and if the city agrees to assume the liabilities of the district, then all assets of the district become the property of the city. A city to which the major portion of a water district has been annexed may make such agreement notwithstanding any charter or statute limitation. [Amended by 1965 c.509 §7]

222.560 Procedure for division of installations on withdrawal of part of sanitary district; appeal; joint operation. (1) When a part of a sanitary district is thus withdrawn, the district shall, by action of its

governing body, turn over to the city of which the withdrawn area becomes a part, its sewer lines, pumping stations, disposal and any other properties within the area withdrawn from the district that are not necessary for the operation of the remainder of the sewer system of the district. All out-fall, trunk and collection lines, pumping stations, disposal and other properties which are necessary for the district to continue maintenance and operation of its sewer and disposal system shall remain the property of the district, regardless of whether they are located within or without the city. If the city is not satisfied with the division of property made by the district governing body, or if, within 90 days from the effective date of the withdrawal, the district governing body has failed to make a division, the city's governing body may request the county court or board of county commissioners of the county in which the property is situated to decide upon such a division.

(2) After giving 10 days' notice and an opportunity to be heard to the district governing body, the court or board shall, in accordance with the standards of guidance provided in this section for the district governing board, divide the property.

(3) The decision of the court or board shall be binding upon all parties in interest except that an appeal may be taken therefrom for abuse of discretion in arriving at the decision to the circuit court of the county in which the property withdrawn is located within 30 days from the announcement of the decision. The functions of the district shall be continued in the entire pre-existing area thereof by the district until the final determination of the division of property.

(4) This section shall not prevent the governing bodies of the city and the district from arriving at a binding agreement for a joint operation of the sewer, sewage disposal or other properties of each that will be beneficial to and equitable for the inhabitants and property owners of each after the withdrawal of part of the sanitary district.

222.570 Effect on metropolitan sanitary districts. ORS 222.560 shall not prevent the formation of metropolitan sanitary districts which may include cities under authority of other laws.

222.575 Agreements for joint operation by city and district. The agreements referred to in ORS 222.530 (5), 222.540 (4) and 222.560 (4) may be entered into between the city and a district prior to and contingent upon the withdrawal of the annexed or incorporated area from the district under the provisions of ORS 222.524, or they may be made after such withdrawal. [1957 c.401 §5]

222.580 Procedure applicable to prior annexations in which no property division was made. The provisions of ORS 222.510 to 222.570 and 242.050 are applicable to areas annexed to or incorporated as cities prior to March 18, 1949. The procedure provided in those sections may be followed in all cases in which such incorporation or annexation was effective prior to March 18, 1949, and in which no apportionment of property was made by March 18, 1949. As to any such district which has not already been taken over by, or come to an agreement with, the city involved, the effective date of the taking over shall be March 18, 1949, or the date of the agreement arrived at under the standards provided in ORS 222.530 to 222.560.

MERGER OF CITIES; ANNEXATION OF TERRITORY SURROUNDED BY CITY

222.610 Surrender of city charter and merger into adjoining city; elections required. Any city may surrender its charter and be merged into an adjoining city in the same or another county. Cities having a river as a common boundary, or cities the boundaries of which at the nearest point of proximity are separated a distance of not more than 1,500 feet, for the purpose of ORS 222.610 to 222.710, shall be deemed to be adjoining. No cities may become merged unless a majority of the electors of the two cities affected authorize the surrender and merger as provided in ORS 222.620 to 222.680. The elections at which the surrender and merger are authorized in the two cities need not be held simultaneously, but it is sufficient if both are held within a period of one year. [Amended by 1953 c.80 §2; 1983 c.350 §46]

222.620 Submission of merger issue to electors of city surrendering charter; petition for merger; conduct of election. (1) The question of merger shall be submitted to the electors of the city desiring to surrender its charter and be merged into an adjoining city, as provided in this section. The governing body of the city shall call an election on the question when a petition is filed as provided in this section.

(2) The requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under ORS 250.265 to 250.346. However, notwithstanding ORS 250.325, the governing body of the city shall not consider adoption or rejection of the measure before submitting it to the electors.

(3) A petition shall state the proposed permanent rate limit for operating taxes for the city following the merger. The proposed permanent rate limit shall be the rate that would produce the same tax revenue as

would be produced within the city or cities' territorial boundaries were the merger not to take effect.

(4) Notwithstanding subsection (2) of this section, if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the city charter or an ordinance adopted under the city charter.

(5) The question of merger under this section may not be submitted to the electors of the city more than once in any 12-month period.

(6) An election under this section shall be conducted under ORS chapters 246 to 260, except as follows:

(a) The statement summarizing the measure and its major effect in the ballot title shall include a general description of the boundaries of each city proposed to be included in the merger. The description shall use streets and other generally recognized features and name the cities included in the proposed merger. The statement shall state the proposed permanent rate limit for operating taxes. The permanent rate limit that is submitted to the electors shall be the permanent rate limit included in the petition for merger.

(b) The notice of the election shall include a map indicating the boundaries of each city included in the proposed merger.

(7) An election under this section shall be held on the next practicable date under ORS 221.230. [Amended by 1967 c.283 §4; 1981 c.173 §10; 1983 c.350 §47; 1985 c.808 §72; 1995 c.79 §82; 1995 c.534 §12; 1997 c.541 §358a]

222.630 [Repealed by 1983 c.350 §331a]

222.640 [Amended by 1979 c.317 §5; repealed by 1983 c.350 §331a]

222.650 Submission of merger issue to electors of city retaining charter; tax rate limit for successor city; notice of election. (1) The question of merger shall be submitted to the electors of the city into which the city surrendering its charter is to be merged as provided in this section. The governing body:

(a) May order the election on its own resolution; or

(b) Shall order the election when a petition is filed as provided in this section.

(2) The requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under ORS 250.265 to 250.346. However, notwithstanding ORS 250.325, if the governing body of the city orders the election, the governing body shall not first

consider adoption or rejection of the measure before submitting it to the electors.

(3) A petition or resolution shall state the proposed permanent rate limit for operating taxes for the city following the merger. The proposed permanent rate limit shall be the rate that would produce the same tax revenue as would be produced within the city or cities' territorial boundaries were the merger not to take effect.

(4) Notwithstanding subsection (2) of this section, if ORS 250.255 makes ORS 250.265 to 250.346 inapplicable to a city, the requirements for preparing, circulating and filing a petition under this section shall be as provided for an initiative petition under the city charter or an ordinance adopted under the city charter.

(5) The question under this section may not be submitted to the electors of the city more than once in a 12-month period.

(6) An election under this section shall be conducted under ORS chapters 246 to 260, except as follows:

(a) The statement summarizing the measure and its major effect in the ballot title shall include a general description of the boundaries of each city proposed to be included in the merger. The description shall use streets and other generally recognized features and name the cities included in the proposed merger. The statement shall state the proposed permanent rate limit for operating taxes. The permanent rate limit that is submitted to the electors shall be the permanent rate limit included in the petition for merger.

(b) The notice of the election shall include a map indicating the boundaries of each city included in the proposed merger.

(7) An election under this section shall be held on the next practicable date under ORS 221.230. [Amended by 1967 c.283 §5; 1979 c.316 §13; 1983 c.350 §48; 1985 c.808 §73; 1995 c.79 §83; 1995 c.534 §13; 1997 c.541 §358b]

222.660 [Repealed by 1983 c.350 §331a]

222.670 [Amended by 1979 c.317 §6; repealed by 1983 c.350 §331a]

222.680 Effective date of merger. If the two cities affected vote affirmatively on the question of merger upon the same day, the merger of the two cities shall become effective 30 days after the date on which the elections were held. If the question is affirmatively voted upon at elections held on different dates in the two cities, the merger shall become effective 30 days after the last election is held. [Amended by 1983 c.350 §49]

222.690 Effect of merger on rights, liabilities and jurisdiction of the merged cities. On the date the surrender and merger become effective under ORS 222.680, without

any further or formal action, all rights and property, both real and personal, then vested in or belonging to the city which voted to surrender its charter, including all parks, public grounds, buildings and improvements and all rights or property in public streets or highways and also including all other rights and property vested in or belonging to the city of any nature whatever whether of the same or similar general nature as those expressly mentioned or differing therefrom in kind, nature, degree or otherwise, shall thereupon be rights and property of the city into which it is merged. However, all county roads lying within the limits of the merged city which have not been laid out or accepted as streets, shall remain county roads until they are laid out or accepted as streets. All debts and liabilities and obligations of the city surrendering its charter shall thereupon be liabilities of the city into which it is merged and the last named city shall thereupon assume all liabilities of the city surrendering its charter. All valid claims against the city surrendering its charter shall thereafter be valid claims against the city into which it is merged. The inhabitants of the city surrendering its charter shall become subject in all respects to the jurisdiction of the authorities of the city into which it is merged. The jurisdiction of any public authority exercised theretofore in the city surrendering its charter, so far as it is in conflict with the corporate authority of the city in which it is merged, shall cease and the city surrendering its charter shall lose its corporate identity entirely. [Amended by 1983 c.350 §50]

222.700 Effect of merger on pending actions and proceedings; street work proceedings. (1) The merger shall not affect any suits, actions or proceedings pending in any court in which the city surrendering its charter is a party, but all such suits, actions and proceedings shall be defended or prosecuted to termination by the city into which it is merged. All suits, actions and proceedings pending in the municipal court of the city surrendering its charter shall be transferred to the municipal court of the city into which it is merged.

(2) The merger shall not affect any proceedings for the opening, widening or extension of any street or for any street improvement or sewer pending at the time of the election in the merged city, but the proceedings shall be continued and all provisions of the charter and ordinances of the merged city shall remain in effect so far as they may affect any matter set out in this section. [Amended by 1983 c.350 §5; 1999 c.788 §55]

222.710 Return statements filed with county recording officer. If any two cities vote to merge under ORS 222.610 to 222.710, the officer having charge and custody of the records of the city into which the city surrendering its charter is merged, on or before the date on which the merger becomes effective, shall file for record with the officer of the county in which the city is located having charge and custody of the deed records of the county, certified copies of the written statements of returns of the election in the two cities. The county officers shall enter the statements of returns of record in the deed records of the county. [Amended by 1983 c.350 §52]

222.720 [Repealed by 1983 c.350 §331a]

222.750 Annexation of unincorporated territory surrounded by city. (1) As used in this section:

(a) "Creek" means a natural course of water that is smaller than, and often tributary to, a river, but is not shallow or intermittent.

(b) "River" means a large, continuous and natural stream of water that is fed along its course by converging tributaries and empties into an ocean, lake or other body of water.

(2) When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore, a river, a creek, a bay, a lake or Interstate Highway 5, the city may annex the territory pursuant to this section after holding at least one public hearing on the subject for which notice has been mailed to each record owner of real property in the territory proposed to be annexed.

(3) This section does not apply when the territory not within a city:

(a) Is surrounded entirely by water; or

(b) Is surrounded as provided in subsection (2) of this section, but a portion of the corporate boundaries of the city that consists only of a public right of way, other than Interstate Highway 5, constitutes more than 25 percent of the perimeter of the territory.

(4) Unless otherwise required by its charter, annexation by a city under this section must be by ordinance or resolution subject to referendum, with or without the consent of any owner of real property within the territory or resident in the territory.

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

cord or other officer performing the duties of the city recorder shall:

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

(b) Notify the county clerk of each county in which any part of the territory subject to delayed annexation is located not sooner than 120 days and not later than 90 days before the annexation takes effect.

(6) Notwithstanding subsection (5) of this section, property that is subject to delayed annexation becomes part of the city immediately upon transfer of ownership.

(7) This section does not limit provisions of a city charter, ordinance or resolution that are more restrictive than the provisions of this section for creating or annexing territory that is surrounded as described in subsection (2) of this section.

(8) If a city charter, ordinance or resolution requires the city to conduct an election in the city, the city shall allow electors, if any, in the territory proposed to be annexed to vote in the election on the question of annexation. If the governing body of the city finds that a majority of the votes cast in the city and the territory combined favor annexation, the governing body, by ordinance or resolution, shall proclaim the annexation approved. The proclamation shall contain a legal description of each territory annexed. [Amended by 1963 c.444 §1; 1985 c.702 §16; 2007 c.654 §1; 2007 c.706 §1]

222.810 [Amended by 1953 c.562 §2; repealed by 1969 c.49 §1]

222.820 [Repealed by 1969 c.49 §1]

222.830 [Repealed by 1969 c.49 §1]

HEALTH HAZARD ABATEMENT

222.840 Short title. ORS 222.840 to 222.915 shall be known and may be cited as the Health Hazard Abatement Law. [1983 c.407 §2]

222.850 Definitions for ORS 222.840 to 222.915. As used in ORS 222.840 to 222.915, unless the context requires otherwise:

(1) “Affected territory” means an area within the urban growth boundary of a city and which is otherwise eligible for annexation to that city and in which there exists an actual or alleged danger to public health.

(2) “Authority” means the Oregon Health Authority.

(3) “City council” means the legislative body of a city.

(4) “Commission” means the Environmental Quality Commission.

(5) “Danger to public health” means a condition which is conducive to the propagation of communicable or contagious disease-producing organisms and which presents a reasonably clear possibility that the public generally is being exposed to disease-caused physical suffering or illness, including a condition such as:

(a) Impure or inadequate domestic water.

(b) Inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste.

(c) Inadequate improvements for drainage of surface water and other fluid substances.

(6) “Director” means the Director of the Oregon Health Authority.

(7) “District” means any one of the following:

(a) A metropolitan service district formed under ORS chapter 268.

(b) A county service district formed under ORS chapter 451.

(c) A sanitary district formed under ORS 450.005 to 450.245.

(d) A sanitary authority, water authority or joint water and sanitary authority formed under ORS 450.600 to 450.989.

(e) A domestic water supply district formed under ORS chapter 264.

(8) “Local board of health” means a local public health authority, as defined in ORS 431.003. [1967 c.624 §1; 1973 c.637 §1; 1975 c.639 §1; 1983 c.407 §4; 1993 c.577 §17; 2001 c.900 §238; 2009 c.595 §181; 2015 c.736 §54]

222.855 Annexation to remove danger to public health. In addition to the procedures authorized in ORS 222.010 to 222.750, territory otherwise eligible for annexation in accordance with ORS 222.111 which is within the urban growth boundary of a city may be annexed by passage of an ordinance as provided in ORS 222.900 without any vote in such territory or any consent by the owners of land therein if it is found, as provided in ORS 222.840 to 222.915, that a danger to public health exists because of conditions within the territory and that such conditions can be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities. [1967 c.624 §2; 1973 c.637 §2; 1975 c.639 §2; 1981 c.888 §7]

222.860 Proposal for annexation. (1) The city council of any city shall adopt a resolution containing a proposal for annexation without vote or consent in the affected territory. The proposal may contain terms of annexation as provided in ORS 222.111 and shall:

(a) Describe the boundaries of the affected territory; and

(b) Describe the conditions alleged to be causing a danger to public health.

(2) The governing body of any district having jurisdiction over the affected territory may adopt a resolution containing a proposal for annexation to the city without vote or consent in the affected territory. The proposal shall:

(a) Describe the boundaries of the affected territory; and

(b) Describe the conditions alleged to be causing a danger to public health.

(3) The local board of health having jurisdiction shall verify the conditions alleged in the proposal to be causing a danger to public health, based upon its knowledge of those conditions.

(4) The council or governing body shall cause a certified copy of the resolution together with verification by the local board of health having jurisdiction, to be forwarded to the Oregon Health Authority and request the authority to ascertain whether conditions dangerous to public health exist in the affected territory. [1967 c.624 §3; 1973 c.637 §3; 1975 c.639 §3; 1981 c.888 §8; 1983 c.407 §5; 2009 c.595 §182]

222.865 [1967 c.624 §4; 1973 c.637 §4; repealed by 1975 c.639 §18]

222.870 Hearing in affected territory; notice. (1) Upon receipt of the certified copy of the resolution, and verification by the local board of health having jurisdiction, the Oregon Health Authority shall review and investigate conditions in the affected territory. If it finds substantial evidence that a danger to public health exists in the territory, it shall issue an order for a hearing to be held within the affected territory, or at a place near the affected territory if there is no suitable place within that territory at which to hold the hearing, not sooner than 30 days from the date of the order.

(2) Upon issuance of an order for a hearing, the authority shall immediately give notice of the resolution and order by publishing them in a newspaper of general circulation within the city and the affected territory once each week for two successive weeks and by posting copies of the order in four public places within the affected territory. [1973 c.624 §6; 1973 c.637 §5; 1975 c.639 §4; 1983 c.407 §6; 2009 c.595 §183]

222.875 Purpose and conduct of hearing; written findings of fact; rules. (1) The hearing shall be for the sole purpose of determining whether a danger to public health exists due to conditions in the affected territory. It may be conducted by one or more members of the staff of the Oregon Health Authority to whom authority to conduct such a hearing is delegated. It shall proceed in accordance with rules which may be es-

tablished by the authority. Any person who may be affected by the finding, including residents of the city, may be heard. Within 60 days following the hearing, the person conducting the hearing shall prepare and submit to the authority written findings of fact and recommendations based thereon. The authority shall publish a notice of the issuance of such findings and recommendations in the newspaper utilized for the notice of hearing under ORS 222.870, advising of the opportunity for presentation of a petition under subsection (2) of this section.

(2) Within 15 days after the publication of notice of issuance of findings in accordance with subsection (1) of this section any person who may be affected by the findings, including residents of the city, or the affected city, may petition the Director of the Oregon Health Authority according to rules of the authority to present written or oral arguments on the proposal. If a petition is received the director may set a time and place for receipt of argument. [1967 c.624 §7; 1973 c.637 §6; 1975 c.639 §5; 1983 c.407 §7; 2009 c.595 §184]

222.880 Oregon Health Authority order or finding; hearing upon petition; alteration of boundaries; tax differential.

(1) Within 30 days following the final hearing of any arguments received by petition under the provisions of ORS 222.875 (2) the Director of the Oregon Health Authority shall review the arguments and the findings and recommendations of the person conducting the hearing as provided in ORS 222.875 (2). If the director finds no danger to public health exists because of conditions within the affected territory, the director shall issue an order terminating the proceedings under ORS 222.840 to 222.915 with reference to the affected territory.

(2) If the director finds that a danger to public health exists because of conditions within the affected territory, the director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, with the Environmental Quality Commission.

(3) If the director determines that a danger to public health exists because of conditions within only part of the affected territory, the director may, upon petition and hearing, reduce the boundaries of the affected territory to that part of the territory that presents a danger if the area to be excluded would not be surrounded by the affected territory remaining to be annexed and would not be directly served by the sanitary, water or other facilities necessary to remove or alleviate the danger to public health existing within the affected territory remaining to be annexed. The findings shall describe

the boundaries of the affected territory as reduced by the director. The director shall file a certified copy of findings with the city and, except where the condition causing the danger to public health is impure or inadequate domestic water, the commission.

(4) In determining whether to exclude any area the director may consider whether or not such exclusion would unduly interfere with the removal or alleviation of the danger to public health in the affected territory remaining to be annexed and whether the exclusion would result in an illogical boundary for the extension of services normally provided by an incorporated city.

(5) The city shall, when requested, aid in the determinations made under subsections (3) and (4) of this section and, if necessary, cause a study to be made.

(6) Notwithstanding ORS 222.111 (3), the director, in implementing an order under ORS 222.840 to 222.915, may allow the use of the tax differential authorized by ORS 222.111 (3) for a period not exceeding 15 years with the consent of the affected city. [1967 c.624 §8; 1973 c.637 §7; 1975 c.639 §6; 1983 c.407 §8; 1989 c.780 §1; 2009 c.595 §185]

222.883 Stay of proceedings by Oregon Health Authority; purpose; limit. At any time after the Director of the Oregon Health Authority under ORS 222.880 finds that conditions dangerous to public health exist, the Oregon Health Authority may order further proceedings on the findings filed under ORS 222.880 halted in order to allow a city, district or persons affected by the findings to develop and propose an alternative plan to annexation for the removal or alleviation of the conditions dangerous to public health. Proceedings may be stayed under this section for not longer than 30 days. [1983 c.407 §3; 2009 c.595 §186]

222.885 Alternative plan by petition or resolution; stay of proceedings. (1)(a) Within 60 days after the Director of the Oregon Health Authority finds, pursuant to ORS 222.880, that conditions dangerous to public health exist, not less than 51 percent of the electors registered in the affected territory may file a petition with the Oregon Health Authority proposing an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health.

(b) The petition shall state the intent of the residents to seek:

(A) Annexation to an existing district authorized by law to provide facilities within the affected territory necessary to remove or alleviate the dangerous conditions;

(B) With the approval of the city or district, extraterritorial extension of a city's or district's sewer or water lines; or

(C) Approval of a plan other than annexation or extraterritorial extension.

(c) The petition must be accompanied by a proposed plan stating any facilities to be constructed, a proposed means of financing the facilities and an estimate of the time required to construct the facilities and place them in operation.

(2)(a) Within 30 days after the director finds, pursuant to ORS 222.880, that conditions dangerous to public health exist, the city council or the governing body of any district having jurisdiction over the affected territory may file with the authority a validly adopted resolution proposing an alternative plan to annexation to the city for removal or alleviation of the conditions dangerous to public health.

(b) The resolution must be accompanied by a proposed plan stating any facilities to be constructed, a proposed means of financing the facilities and an estimate of the time required to construct the facilities and place them in operation.

(3) Upon receipt of a petition or resolution under this section, the authority shall:

(a) Immediately forward copies of the petition or resolution to the city or district referred to in the petition or resolution, and, except where the condition causing the danger to public health is impure or inadequate domestic water, to the Environmental Quality Commission.

(b) Order further proceedings on the findings filed under ORS 222.880 stayed, pending the review permitted under ORS 222.890 and this section. [1967 c.624 §8a (1), (2); 1973 c.637 §8; 1975 c.639 §7; 1983 c.83 §26; 1983 c.407 §9; 2009 c.595 §187; 2015 c.281 §1]

222.890 Review of alternative plan. (1) An alternative plan proposed pursuant to ORS 222.885 shall be reviewed by the Oregon Health Authority in cases where danger to public health is caused by impure or inadequate domestic water and in all other cases by the Environmental Quality Commission. The plan shall be approved or rejected by the authority or commission. In reviewing the alternative plan contained in the petition, the authority or commission shall consider whether, in its judgment, the plan contains a preferable alternative for the alleviation or removal of the conditions dangerous to public health.

(2)(a) With respect to an alternative plan proposed in a petition filed under ORS 222.885 (1), if the authority or commission determines that annexation to the city provides the best and most expeditious method

of removing or alleviating the dangerous conditions, the alternative plan shall be rejected and further proceedings on the finding filed under ORS 222.880 shall resume.

(b) With respect to an alternative plan proposed in a resolution filed under ORS 222.885 (2), if the authority or commission determines that annexation to the city provides the best, most expeditious and most cost-effective method of removing or alleviating the dangerous conditions, the alternative plan shall be rejected and further proceedings on the finding filed under ORS 222.880 shall resume.

(3) If the authority or commission finds that the alternative plan provides a preferable method of alleviating or removing the dangerous conditions, the petitioners or appropriate governing body shall have six months within which to present to the authority or commission information showing:

(a) That the territory in which the conditions dangerous to public health exist:

(A) Has received approval for the extension of a city's or district's sewer or water lines within the territory or has annexed to a district authorized by law to provide facilities necessary to remove or alleviate the dangerous conditions, and that financing of the facilities for extension of such facilities to the territory has been assured; or

(B) Has taken substantial steps to implement the alternative plan.

(b) Detailed plans and specifications for the construction of any proposed facilities.

(c) A time schedule for the construction of any proposed facilities.

(d) That proposed facilities, if constructed, will remove or alleviate the conditions dangerous to public health in a manner as satisfactory and expeditious as would be accomplished by the proposed annexation to the city.

(4)(a) The authority or commission shall review the final plan proposed by the petitioners, city or district and shall promptly certify whether the requirements of subsection (3) of this section have been met.

(b) If the requirements have been met, the authority shall certify the alternative plan. Further annexation proceedings on the findings filed under ORS 222.880 shall be suspended and the city shall be so notified.

(c) If the requirements of subsection (3) of this section have not been met or whenever the authority or commission determines that the requirements of the certified plan are not being satisfied, further proceedings on the findings filed under ORS 222.880 shall resume. [1967 c.624 §8a (3), (4), (5); 1973 c.637 §9; 1975 c.639 §8; 1983 c.407 §10; 2009 c.595 §188; 2015 c.281 §2]

222.895 [1967 c.624 §9; 1973 c.637 §10; repealed by 1975 c.639 §9 (222.896 enacted in lieu of 222.895)]

222.896 Judicial review. Judicial review of final orders under ORS 222.840 to 222.915 shall be as provided in ORS 183.480 to 183.500 for judicial review of contested cases. [1975 c.639 §10 (enacted in lieu of 222.895)]

222.897 Study and plan for alleviation of health danger by city; procedure if city fails to act. (1) Upon receipt of a certified copy of the findings of the Oregon Health Authority under ORS 222.880, the city council shall cause a study to be made and preliminary plans and specifications developed for the sanitary, water or other facilities necessary to remove or alleviate the conditions causing a danger to public health. The council shall prepare a schedule setting out the steps necessary to put the plan into operation and the time required for each step in the implementation of the plan. A copy of the plans and specifications and the time schedule shall, in the case where the danger to public health is caused by impure or inadequate domestic water, be submitted to the authority and in all other cases to the Environmental Quality Commission.

(2) If the city within 90 days, fails to complete the requirements in subsection (1) of this section, the authority shall conduct the necessary studies and prepare plans and other documents required for the consideration of the proposal and the final determination of the proceedings. The expense of the study and preparation of the plans and other documents shall be paid by the city upon vouchers properly certified by the Director of the Oregon Health Authority. [1975 c.639 §12; 2009 c.595 §189]

222.898 Determination if health danger can be alleviated; approval of plans; notice to city. (1) Within 60 days of receipt of the preliminary plans and other documents submitted as required by ORS 222.897, the appropriate reviewing authority shall determine whether the conditions dangerous to public health within the territory proposed to be annexed can be removed or alleviated by the sanitary, water or other facilities proposed by the plans and specifications.

(2) If such authority considers the proposed facilities and the time schedule for installation of such facilities adequate to remove or alleviate the dangerous conditions, it shall approve the proposal and certify its approval to the city.

(3) If the authority considers the proposed facilities or time schedule inadequate, it shall disapprove the proposal and certify its disapproval to the city including the particular matters causing the disapproval. The city council shall then submit an additional or revised proposal.

(4) In the event the authority upon review of the plans and other documents submitted under subsection (1) of this section determines that the danger to public health in the area proposed to be annexed cannot be removed or alleviated by sanitary, water or other facilities ordinarily provided by incorporated cities it shall terminate the proceedings upon the proposal and notify the city. [1975 c.639 §13]

222.900 City to adopt ordinance. (1) Subject to subsection (2) of this section, upon receipt of the certified copy of the finding as provided in ORS 222.880 (2) or (3) and certification of approval of plans under ORS 222.898, the city council shall adopt an ordinance which shall:

(a) Contain the legal description of the territory annexed;

(b) Contain the terms of the annexation, if any, made under ORS 222.111;

(c) Adopt the plans, specifications and time schedule as approved by the Oregon Health Authority or Environmental Quality Commission; and

(d) Declare the territory annexed to the city in accordance with ORS 222.840 to 222.915.

(2) An ordinance shall not be enacted as provided in subsection (1) of this section until the expiration of the time for appeal under the provisions of ORS 222.896 and, in the event an appeal is filed, following the determination of that appeal.

(3) If the authority makes its finding under ORS 222.880 (3), the city shall not annex a greater area than that described in the finding. The recorder, or other officer performing the duties of the recorder, shall transmit a transcript to the Secretary of State, including certified copies of the resolution required in ORS 222.860, the finding of the Director of the Oregon Health Authority, and the ordinance proclaiming annexation of the territory.

(4) If the city council adopts the ordinance of annexation as provided in subsection (1) of this section, it shall within one year thereafter prepare plans and specifications for the sanitary, water or other facilities proposed to be provided in the annexed area, in compliance with ORS 448.115 to 448.285 or 468B.055 and shall then proceed in accordance with the time schedule to construct or install these facilities. The commission shall use its powers of enforcement under ORS 448.305, 454.010 to 454.040, 454.205 to 454.255, 454.505 to 454.535, 454.605 to 454.755, and ORS chapters 468, 468A and 468B to insure that the facilities are constructed or installed in conformance with the approved plans and schedule. The manner of

financing the cost of the facilities shall be determined by the city council. [1967 c.624 §10; 1973 c.637 §11; 1975 c.639 §14; 1983 c.740 §57; 2009 c.595 §190]

222.905 Proposal or petition for annexation. (1) If a local board of health believes that a danger to public health exists within a territory within its jurisdiction that is otherwise eligible for annexation in accordance with ORS 222.111, the board shall proceed in the same manner as a city is authorized to proceed under ORS 222.860.

(2)(a) Forty percent of the residents of territory otherwise eligible for annexation in accordance with ORS 222.111 who believe a danger to public health exists within the territory may petition the local board of health to initiate proceedings to annex the territory as provided in subsection (1) of this section.

(b) The local board of health shall investigate the matters alleged in the petition within 90 days after receiving the petition and shall either initiate proceedings to annex the territory or certify to the petitioners that the investigation disclosed insufficient evidence to initiate proceedings.

(3)(a)(A) At any time before the annexation of territory initiated under subsection (2) of this section is final, the petition shall be withdrawn if a number of petitioners described in subparagraph (B) of this paragraph provides the local board of health with a copy of an alternative plan that meets the requirements of ORS 222.885 (1)(c).

(B) The required number of petitioners under this paragraph is any number that, if subtracted from the number of petitioners who signed the petition under subsection (2) of this section, would reduce the total number of petitioners below 40 percent of the residents of the territory.

(b) If a petition is withdrawn under paragraph (a) of this subsection before the Director of the Oregon Health Authority finds that a danger to public health exists in the territory under ORS 222.880, the Oregon Health Authority and the local board of health shall terminate all proceedings under ORS 222.840 to 222.915 with respect to the territory that was the subject of the petition.

(c) If a petition is withdrawn under paragraph (a) of this subsection after the director finds that a danger to public health exists in the territory under ORS 222.880, the alternative plan provided under paragraph (a) of this subsection shall be evaluated by the authority or the Environmental Quality

Commission pursuant to the standards described in ORS 222.890. [1967 c.624 §11; 1973 c.637 §12; 1975 c.639 §15; 1981 c.888 §9; 2015 c.281 §3]

Note: Section 4, chapter 281, Oregon Laws 2015, provides:

Sec. 4. (1) The amendments to ORS 222.885, 222.890 and 222.905 by sections 1 to 3 of this 2015 Act apply to proceedings initiated pursuant to ORS 222.840 to 222.915 in which the annexation of affected territory to a city or district, or the extraterritorial extension of city or district services to affected territory, is not final before the effective date of this 2015 Act [June 8, 2015].

(2) The amendments to ORS 222.905 (2) by section 3 of this 2015 Act apply to petitions filed before, on or after the effective date of this 2015 Act that relate to proceedings described in subsection (1) of this section. A petition described in this subsection that does not meet the 40 percent requirement under ORS 222.905 (2) is not valid for any purpose.

(3) For purposes of this section, annexation or extension is final if all necessary actions under ORS 222.840 to 222.915 have been completed and judicial review under ORS 222.896 is no longer available because of lapse of time or issuance of an order from which there is no further appeal. [2015 c.281 §4]

222.910 [1967 c.624 §5; 1973 c.637 §13; repealed by 1975 c.639 §16 (222.911 enacted in lieu of 222.910)]

222.911 Participation of director, officer or employee with interest in affected territory. No officer or employee of the Oregon Health Authority who owns property or

resides within affected territory that is subject to proceedings under the provisions of ORS 222.840 to 222.915 shall participate in an official capacity in any investigation, hearing or recommendation relating to such proceedings. If the Director of the Oregon Health Authority is such a person, the director shall so inform the Governor, who shall appoint another person to fulfill the duties of the director in any investigation, hearing or recommendation relating to such proceeding. [1975 c.639 §17 (enacted in lieu of 222.910); 2009 c.595 §191]

222.915 Application of ORS 222.840 to 222.915. The provisions of ORS 222.840 to 222.915 do not apply to proceedings to annex territory to any city if the charter or ordinances of the city conflict with or are inconsistent with ORS 222.840 to 222.915. [1967 c.624 §12; 1971 c.673 §5]

PENALTIES

222.990 Penalties. Failure to comply with the provisions of ORS 222.010 subjects the city to a penalty of \$100 which may be recovered by an action in the name of the county in which the city is located.

CITIES



CANNON BEACH CITY COUNCIL

STAFF REPORT

CANNON BEACH ELEMENTARY CONSTRUCTION DELIVERY PROPOSAL

Agenda Date: September 14th, 2021

Prepared by: Bruce St.Denis, City Manager

BACKGROUND

On July 1st, 2020 the City acquired the former Cannon Beach Elementary (CBE) School property with the intent of rejuvenating the facilities to serve as a meeting and activity center for both tourists and residents. The city contracted for a study of the physical condition of the buildings on the property and received a report that discussed the issues and probable costs of re-purposing the facilities.

ANALYSIS/INFORMATION

Staff and Council have had several discussions regarding the benefits of utilizing the Construction Manager/General Contractor (CM/GC) model for the rejuvenation of the CBE property.

By going with a CM/GC construction delivery model the firm that will ultimately be the general contractor is hired for a negotiated fee early in the design process and acts as a partner to the Architect/Engineering firm assisting in design decisions of all types. The extensive construction experience of the CM/GC can help further identify and make recommendations regarding the currently known and unknown conditions. After the bid drawings are complete the CM/GC takes on the role of the general contractor and for a negotiated fee, conducts the bid process and hires the subcontractors that will eventually construct the building(s) and manages the construction process.

The result of selecting CM/GC in conjunction with an Architect/Engineer is that better decisions can be made during the design process based on the knowledge/experience base of both parties and a contractor that has been intimately involved in the design.

In order for the city to utilize the CM/GC method the City Council will need to approve a resolution that lists findings of fact as to why the city feels that it is the best method for the CBE project. A draft resolution is attached for your consideration.

RECOMMENDATION

Council discussion and consideration adopting resolution at the October 5th meeting.

List of Attachments

- A Draft Resolution 21-26
- B Draft Hearing Notice

RESOLUTION NO. 2021-**A RESOLUTION OF THE CANNON BEACH CITY COUNCIL ADOPTING FINDINGS TO SUPPORT AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS FOR THE CANNON BEACH ELEMENTARY REJUVENATION PROJECT, DECLARING SUCH EXEMPTION, AND AUTHORIZING A PROCESS TO AWARD A CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) CONTRACT.****RECITALS**

WHEREAS, ORS 279C.335(2) authorizes the City of Cannon Beach ("City") City Council to exempt specific projects from the competitive bidding requirements of ORS Chapter 279C.335(1) upon approval of certain findings of fact and allows the City to use alternate contracting methods.

WHEREAS, Oregon Administrative Rule 137-049-0610 defines permissible alternative contracting methods to include the Construction Manager/General Contractor (CM/GC) contracting method for public improvements.

WHEREAS, the City Council has determined that using the CM/GC form of contracting for project for the renovation of the Cannon Beach Elementary School property will be most beneficial to the City and its residents based on the findings attached as Exhibit A.

WHEREAS, selection of a CM/GC firm for the Project will be made using a Request for Proposal that identifies the specific criteria the City will use to evaluate proposals and select a contractor, and the criteria that govern how a guaranteed maximum price for the Project will be established. The CM/GC will also be required to provide full performance and payment bonds for the work following detailed review of the design documents.

WHEREAS, ORS 297C.335(4) requires the City Council to hold a hearing to allow public comments on the City Council's draft findings, and ORS 297C.335(5) requires the City to publish notice of the hearing at least 14 days in advance. Notice of the public hearing was advertised in the Oregon Daily Journal of Commerce and The Astorian and the hearing was held October 5, 2021.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Cannon Beach that:

1. The City Council of the City Cannon Beach, hereby:
 - a) Adopts the Findings of Fact described in Exhibit A to support an exemption from competitive bidding for the contract to construct the Project.
 - b) Declares an exemption from competitive bidding for the contract to construct the Project.
 - c) Authorizes and directs City staff to proceed with the process of soliciting for a CM/GC contract for the Project according to applicable statutes and rules for such solicitations.
 - d) Directs the City Manager, and such persons as the City Manager may direct, to negotiate a CM/GC contract with the selected firm in a form approved by the City Attorney.
2. This resolution is effective immediately upon its enactment by the City Council.

PASSED by the Common Council of the City of Cannon Beach this ____ day of September 2021, by the following roll call vote:

YEAS:

NAYS:

EXCUSED:

Sam Steidel, Mayor

Attest:

Bruce St. Denis, City Manager

Exhibit A – Findings of Fact

Pursuant to ORS 279C.335(2), the Cannon Beach City Council makes the following Findings of Fact to support an exemption from competitive bidding to permit the award of a CM/GC contract for the Cannon Beach Elementary School Renovation Project:

1. The CM/GC process will provide the City of Cannon Beach with the following advantages:

- a) Cost savings, as described below;
- b) Reduction of schedule risk typically associated with multiple construction agreements;
- c) Opportunity to select a qualified CM/GC firm that will work closely with the architect and engineers rather than separating the design and construction elements;
- d) Ensuring accurate cost data for project decisions;
- e) Greatest assurance of successful schedule management; and
- f) Higher confidence in obtaining quality construction.

2. Project Description.

The purpose of the project is to “rejuvenate” or “re-purpose” the former Cannon Beach Elementary School property into a facility that will:

- a) Expand and facilitate the ability of lodging establishments to entice meeting groups to their properties by providing a facility that can function as a meeting center as well as a community gathering spot.
- b) Focus on the opportunity for tourists and residents for cultural, historical and environmental education the site provides due to the Indian village that was on the property for thousands of years, the estuary on which the property is located and the importance of the site to the Lewis and Clark expedition.

3. Responsibilities of the CM/GC Firm.

- a) Design Phase.

The CM/GC firm will provide scheduling, bid packaging, cost estimating, and review design documents prepared by the architect or engineer from the standpoint of value, long lead procurements, design feasibility and constructability, and negotiate a Guaranteed Maximum Price for the work prior to completion of the construction documents.

b) Bid Process.

All material procurement and work by subcontractors will be competitively bid. The CM/GC firm will coordinate the bid process for all work with full oversight and participation by City staff and Architect/Engineer. The CM/GC firm will provide a recommendation to the City for each subcontract. Upon approval from the City, the CM/GC will execute a contract with the approved subcontractor.

c) Construction Phases.

The CM/GC firm will be responsible for completing the construction project, including scheduling of subcontractors, materials procurement and delivery. The CM/GC is responsible for completing the project on schedule, within budget, and at, or above, the quality defined in the specifications prepared by the design engineering firm.

4. Rationale for Using CM/GC Method.

a) No Diminished Competition or Encouragement of Favoritism.

Because a CM/GC will be selected through an open, competitive process among qualified contractors including formal proposals, successful experience criteria, interviews, and cost proposals, it is unlikely that the exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

Furthermore, because the work subcontracted by the CM/GC will be awarded to the lowest responsive bidder, this bid process will not result in favoritism in the awarding of public contracts.

b) Value Engineering.

The CM/GC will work with the design architect or engineer to perform value engineering to identify potential problem areas in terms of constructability, try to find alternatives to lower the cost of the project and to find the lowest-cost approach to sequencing and completing the required improvements.

Furthermore, because the CM/GC will have adequate time to prepare bid packages, review and analyze bids received from subcontractors, subcontractors are more likely to be well-qualified subcontractors, which should result in better quality and cost savings.

c) Change Order Cost Control.

The CM/GC method should help control change order costs. The buildings at the Cannon Beach Elementary location that are being renovated are 60 years old and many of the systems or components (i.e., HVAC) being renovated are several decades old. Further, the systems in the buildings have not been maintained for 30 years nor have they been in operation for approximately 20 years. Having the Contractor perform cost analysis and feasibility reviews is expected to reduce the potential for change orders caused by unforeseen conditions. Reduction of change orders should result in cost savings.

d) Reduced Construction Time.

Using the CM/GC method of contracting will reduce the overall time it takes for the project by allowing the contractor to plan construction and phasing during the design portion instead of after bids are opened. The CM/GC method also provides greater scheduling flexibility and allows improvements to begin at an earlier

date because the builder is involved in developing the design of various project elements.

e) Qualified Management.

The Cannon Beach City Manager has successfully utilized the CM/GC construction delivery system for improvements to City Hall, the Public Works Facility, the Animal Control Structure and the Police Station and is qualified to manage the complexities of this CM/GC construction process.

g) Operational, Budget, and Financial Data.

The total estimated budget for this Project is \$3,700,000 which is also the estimated total cost of the work. However, the costs may come in higher because of the recent spike in construction costs which occurred after the estimated cost was received. The lower design costs associated with a CM/GC contract will enable more funds to be spent on the actual construction.

h) Specialized Expertise Required.

Utilizing a CM/GC on this project will be better than using just City staff to complete the project. The buildings involved were built in the early 1960's and have not been operational for approximately 30 years and having a firm with general contractor experience on the design team will yield many benefits when it comes time for construction. The CM/GC can address constructability issues involving the renovation of City Hall during the design phase.

i) Public Benefits.

The potential cost of the project will be reduced by combining the expertise of a general contractor during the design phase to address constructability, material choices, design of bid packages and phasing.

j) Public Safety.

No significant public safety benefits are anticipated as a result of using the CM/GC contracting method.

k) Technical Complexity.

The buildings being renovated are older and have been out of operation for many years. There are no as-built or construction plans for recent projects available. Because the CM/GC process requires close coordination between the architect, engineers and CM/GC builder, it will help to ensure that modern construction materials and techniques can be matched to the existing buildings.

l) Funding sources

Based on the strong tie with anticipated tourism uses the funding is intended to come from loan receipts that will be paid back by discretionary TLT funds forwarded annually from the Clatsop County jail project.

NOTICE OF PUBLIC HEARING
CANNON BEACH CITY COUNCIL

The Cannon Beach City Council will hold a public hearing on Tuesday, **October 5**, at **6:00 p.m.** at Cannon Beach City Hall, 163 East Gower Street, Cannon Beach, for the purpose of considering findings to support the CM/GC contracting process for the proposed Cannon Beach Elementary School renovation project. A copy of the City's proposed findings are available on the City's website on the October 5th Council Meeting page. Correspondence should be mailed to the Cannon Beach City Council c/o Jennifer Barrett, P.O. Box 368, Cannon Beach, OR 97110 or via email at recorder@ci.cannon-beach.or.us. The City Council reserves the right to continue the hearing to another date and time. If the hearing is continued, no further public notice will be provided. The hearings are accessible to the disabled. Contact City Manager, the ADA Compliance Coordinator, at (503) 436-8050, if you need any special accommodations to attend or to participate in the meeting.

Posted: **September 20, 2021**



CANNON BEACH CITY COUNCIL

STAFF REPORT

CONCERNS REGARDING THE LOSS OF TREES IN THE CITY

Agenda Date: September 14, 2021

Prepared by: Bruce St.Denis, City Manager

There has been considerable angst over the number of trees that appear to have been removed lately. The following chart shows tree removal since January 1, 2021.

Trees taken from Public Property require an extensive process that includes public notice and an opportunity to appeal a decision to remove a tree. That process is detailed on the following pages.

Trees taken from private property also follow a process to ensure that trees that do not have to be removed are saved. This type of removal activity is usually associated with someone building on a lot that they own. However, to protect existing trees, the property owner is required to work with a certified arborist to determine which trees are unlikely to survive the construction process.

The following table shows that a total of 121 trees have been removed in the most recent seven months. 19 (16%) were taken from public property and 102 (84%) taken from private property.

Month	TOTAL REMOVED	Public Removed	Private Removed
January	9	1	8
February	15	0	15
March	29	3	26
April	7	5	2
May	1	0	1
June	43	6	37
July	17	4	13
August			
September			
October			
November			
December			
TOTAL	121	19	102

The next chart shows the number of trees that have been taken down annually over the last seven years.

REMOVED

Month	2015	2016	2017	2018	2019	2020	2021
January	N/A	5	1	15	28	10	9
February	N/A	43	8	1	8	52	15
March	N/A	17	2	9	9	4	29
April	3	31	8	24	9	8	7
May	27	13	13	13	5	23	1
June	6	14	18	1	6	15	43
July	5	8	4	9	22	13	17
August	4	1	15	7	18	5	
September	12	57	3	24	2	28	
October	16	24	10	8	5	42	
November	38	71	13	16	21	17	
December	6	5	18	26	16	20	
TOTAL	117	289	113	153	149	237	121

A review of building permit activity sheds some light on why people have become more concerned recently. Notice that activity over the past two years was two to three times higher than the highest of any of the prior five years.

	# of Building Permits
2014-2015	75
2015-2016	82
2016-2017	88
2017-2018	97
2018-2019	115
2019-2020	226
2020-2021	344

Public Works handles tree removal and replacement in the public rights-of-way. Community Development Department handles those on private property that are impacted by development.

The Public Works Team, the City Arborist and the Community Development Director make every effort to keep as many trees as possible, whenever and wherever possible, as long as the trees don't present a hazard or danger to public safety or threaten property damage.

Right Of Way (ROW) tree removal process:

When a complaint is received, the Public Works Assistant Director tries to do a site visit within eight hours. If the tree is determined to be a possible hazard, the City Arborist, Jeff Gerhardt is contacted, and a site visit is scheduled to discuss options for a remedy.

If the City Arborist deems the tree a hazard requiring it to be removed, the arborist will write up a tree inspection report along with a tree hazard evaluation form. If the tree presents an immediate danger of collapse and if such potential collapse represents a clear and present hazard to persons or property, the emergency removal process will start as soon as practical.

If the tree does not need to be removed, the City Arborist will make recommendations for saving the tree.

For “non-emergency” hazard tree removals, the City Arborist will submit his reports to Public Works. Public Works then creates a tree notice letter and will mail it to all property owners within 100 feet of the tree. This tree notice is copied to the City Council, Public Works Director, City Manager and Jeff Adams, the Community Development Director. Public Works also posts the notice on the City’s website, [Public Notices | City of Cannon Beach Oregon \(cannon-beach.or.us\)](http://Public Notices | City of Cannon Beach Oregon (cannon-beach.or.us)), and on the two bulletin boards in City Hall and at the two post offices.

The public has 10 calendar days from date of notice posting to submit public comment on the potential removal. Once that period ends, Public Works makes a notation on the application whether public comment was received and will forward the application to the Community Development Director (CDD) for review. If public comment was received, the CDD also gets a copy of the correspondence and considers the comments in the decision-making process.

A decision will be made to determine the outcome of the tree. If the Community Development Director approves the removal, Public Works is given a copy of the approved application and the removal is scheduled.

Anyone who submitted public comment also receives a letter notifying them of whether the tree removal application was approved or not. They then have 14 calendar days from the date of this letter being mailed to appeal the decision to the planning commission, if desired. The Parks and Community Services Committee also receives any recent/current tree removal applications in its monthly meeting packet.

Removal of Trees on Private Property

Requests for removal of trees on private property are processed according to Cannon Beach Municipal Code (CBMC) Chapter 17.70 Tree Removal and Protection.

The application is submitted to the City and the fee is paid.

The Community Development Department reviews the application for completeness.

If complete, the application is sent to the City Arborist for review and feedback.

There are a few situations where the application is not sent to the City Arborist and the Community Development Director reviews/approves the application. This occurs when a structure or development has been approved and removal is allowed pursuant to Cannon Beach Municipal Code 17.70.030. This addresses cases in which any form of ground disturbance will be occurring, including vehicular access and utility construction, or if a tree is completely dead.

When applicable, the City Arborist reviews the application and does a site visit. The City Arborist prepares a report that details the conditions of all trees, including those that are not directly in the construction area but may be impacted by nearby activity, and provides a recommendation. The City Arborist also provides a recommendation for the type of trees that should be replanted, if required.

The Community Development Department follows the recommendation of the City Arborist, signs off on the permit, and notes any replacements that may be required to the contractor or property owner.

I appreciate you taking the time to review this information and please contact me if you have any questions.



CANNON BEACH CITY COUNCIL

STAFF REPORT

CITY COUNCIL RETREAT AND GOAL SETTING PLANNING

Agenda Date: September 14, 2021

Prepared by: Bruce St.Denis, City Manager

ANALYSIS/INFORMATION

It is time to start planning for the annual City Council Retreat and Goal Setting starting with dates and agenda items.