

**City of Rainier
Planning Commission Meeting
May 12, 2021
6 p.m.
Rainier City Hall**

Chair Erin O’Connell called the meeting to order at 6:07 p.m.

Commissioners Present: Erin O’Connell, Paul Langner, Dena Nordstrom, Nina Phillips and Laura Tretheway

Commissioners Absent: None

City Staff Present: City Administrator W. Scott Jorgensen

Visitors Present: Terry Deaton

Visitor Comments: Deaton said that she has a drainage analysis for the Rinearson Slough area on the west side of town if the commission needs it.

Consider Approval of the Consent Agenda: Consider Approval of the February 10, 2021 and March 10, 2021 Regular Planning Commission Meeting Minutes-Commissioner Paul Langner moved to approve the February 10 minutes. That motion was seconded by Commissioner Dena Nordstrom and adopted unanimously. Langner moved to approve the March 10 minutes. That motion was seconded by Commissioner Nina Phillips and adopted unanimously.

New Business:

- a. Flood Plain Ordinance—Chair Erin O’Connell said Columbia County is adopting language from the state to update its ordinance. City Administrator W. Scott Jorgensen said that Langner provided language from Clatsop County for inclusion in the meeting packet. Langner said Clatsop County’s ordinance does more than what is required but is a model that’s out there. That ordinance is 37 pages long, is not user friendly and is difficult to work with. O’Connell said a flood plain ordinance is important, from a development standpoint. If a property owner wants to put a building in an area that could flood, they could be displaced. The city’s ordinance should be user friendly but have discretionary options included. Columbia County’s ordinance was essentially a template from the state. The public was notified about the county’s ordinance and people were upset because they didn’t understand it. The ordinance was daunting to read. The city can adopt an ordinance saying it’s adopting the county’s ordinance and include a FAQ with it. Langner said he liked the approach of using the county’s ordinance because the city’s permitting is done through the county. O’Connell said the city needs to identify its flood plain development manager as part of this process. Even though the city’s permitting is done through the county, nobody there looks at flood plain issues on the city’s behalf. The city should give itself discretionary decision

making in its flood plain ordinance. Jorgensen asked if the county's ordinance has been officially passed. O'Connell said it was approved by the county planning commission. He asked if not having the flood plain ordinance already in place is hindering potential development of the industrial and commercial zones on the city's west side. O'Connell and Commissioner Laura Trethewey said it is. Langner suggested that the ordinance include the most recent Focal Impulse and Rotor Mapping, a statement that the city reserves the right to discretion and Base Flood Elevation certification. Commissioners agreed by consensus to direct Jorgensen to draft an ordinance with those parameters.

Unfinished Business:

- a. Short Term Rental Ordinance—Phillips said she liked Seaside's ordinance, but not the one from Cannon Beach. O'Connell agreed. Phillips said the Seaside ordinance is simple. Trethewey said she likes the idea of annual renewals on a yearly basis. O'Connell said that was part of the initial discussion. That approach would enable the city to review any complaints that may arise. Phillips said the fees charged by the city should be reasonable. There are AirBnBs in Longview, so there is local demand for it. Nordstrom suggested expanding the area of the neighbors to be notified about a short-term rental application. Commissioners agreed by consensus to direct Jorgensen to draft an ordinance based on the one from Seaside. Jorgensen said he would want to include a clause similar to the one in the city's food cart ordinance that enables staff to revoke a license if too many complaints are received but allows applicants to appeal that decision to the council. Langner recommended a \$250 application fee and \$250 annual renewal fee. Phillips said she likes the portion of the Cannon Beach ordinance that deals with occupancy and parking.

O'Connell adjourned the meeting at 7:37 p.m.

Erin O'Connell, Chair

Sarah Blodgett, City Recorder

**City of Rainier
Planning Commission Meeting
June 16, 2021
6 p.m.
Rainier City Hall**

Chair Erin O’Connell called the meeting to order at 6:17 p.m.

Commissioners Present: Erin O’Connell, Dena Nordstrom and Nina Phillips

Commissioners Absent: Paul Langner and Laura Trethewey

City Staff Present: City Recorder Sarah Blodgett and City Administrator W. Scott Jorgensen

Visitors Present: Duane Bernard, Terry Deaton

Visitor Comments: Duane Bernard introduced himself as the vice president of the Rainier Oregon Historical Museum. The museum wants to construct a building on its property, but the city’s code says that certain construction materials are prohibited in the zone where it’s located. Metal is one of them. The museum board is looking at doing a metal building instead of one made primarily of wood. They’re thinking of having a steel structure, siding and roof because the cost of lumber has gotten so high. O’Connell said design review is done by the city’s planner. It’s possible that a variance could be considered. She suggested that it be run by the city’s planner to get clarification. The code also says that high quality material can be used. Standards need to be applied consistently, but perhaps that portion of code can be better defined than it currently is. City Administrator W. Scott Jorgensen said Bernard had asked him about it. He suggested that Bernard approach the commission. Jorgensen will reach out to the city’s planner to see if there are any options.

Consider Approval of the Consent Agenda: Consider Approval of the May 12, 2021 Regular Planning Commission Meeting Minutes—Terry Deaton had some corrections. Those will be made and brought back to the Commission at its next meeting.

Unfinished Business:

- a. Short Term Rental Ordinance—Jorgensen went over the ordinance draft. It’s largely based on the one from Seaside. Mayor Jerry Cole had concerns that allowing homeowners to use their entire houses for short-term rentals could contribute to the current lack of homes on the market available for permanent rental. They came up with the provision prohibiting no more than 50 percent of the rooms of a house being used for short-term vacation rentals. Commissioner Dena Nordstrom said at the previous meeting that she wanted to expand the area of neighbor notification from the 100 feet included in the Seaside ordinance. Jorgensen doubled that to 200 feet. He also included a revocation clause similar to the one he put in place for the food cart ordinance. Under the draft ordinance, short-term vacation rental licenses can be revoked by the city

administrator if complaints are received, but the owner can appeal that decision to council. O'Connell asked about the provision that mentions inspections. Who would be doing the inspections? Jorgensen asked if the county would have adequate records that people could access to prove compliance. O'Connell said there are some permit history records, but that may be difficult for property owners to obtain. She suggested that a sentence be added to state that the inspections can be done by a licensed professional with expertise on fire, life and safety issues. O'Connell also wants to add that detached structures don't count towards the number of rooms that can be rented. Commissioner Nina Phillips moved to recommend the ordinance to council, as amended. That motion was seconded by Nordstrom and adopted unanimously.

- b. Flood Plain Ordinance—O'Connell said that she conferred with some colleagues at the county, who told her that the best option was to reach out to the Department of Land Conservation and Development (DLCDC). Jorgensen said he spoke with the contact at DLCDC that O'Connell provided. That agency is willing to work with the city and its representative can attend a meeting via telephone to discuss the issue. Jorgensen read from his email correspondence with the DLCDC representative, Celida Adair, that was included in the meeting packet. Adair felt that when the city updated its floodplain regulations in 2010, its code was not updated to rescind the previous version from 1986. The 2010 regulations are under Chapter 18.120 and the 1986 regulations are under Chapter 18.80. Chapter 18.80 has regulation language that is out of date and references maps from 1986 instead of the 2020 floodplain maps. Adair recommends that Chapter 18.80 be rescinded and Chapter 18.120 be updated.

Jorgensen told the commissioners that the city has been receiving inquiries from property owners who are outside of city limits who want to access water and sewer services. But the code does not address annexations or put forth any kind of policies, procedures or processes. City residents pay towards the city's debt service for its general obligation bonds that funded its sewer system. Even if the city developed a policy of charging double base rates for residents beyond city limits, those parties still would not be paying towards that. O'Connell said that any annexation ordinance should require that a property be within the urban growth boundary prior to annexation and that it be contiguous to current city limits. She recommended using the annexation ordinance that St. Helens has as a template and starting point. Jorgensen said that a view preservation ordinance had come up in prior Planning Commission meetings. Is that something the group would like to look into? He did some research and found one from Rolling Hills, California. Many of its references are specific to Southern California locations. O'Connell said that she remembered Kalama, Washington looking into something similar. Astoria might also have an ordinance that's worth looking at.

O'Connell adjourned the meeting at 7:15 p.m.

Erin O'Connell, Chair

Sarah Blodgett, City Recorder

DRAFT

**City of Rainier
Planning Commission Meeting
July 22, 2021
6 p.m.
Rainier City Hall**

Chair Erin O'Connell called the meeting to order at 6:03 p.m.

Commissioners Present: Erin O'Connell and Nina Phillips

Commissioners Absent: Paul Langner, Dena Nordstrom and Laura Trethewey

City Staff Present: City Recorder Sarah Blodgett and City Administrator W. Scott Jorgensen

Visitors Present: None

Visitor Comments: There were no visitors at this time.

Consider Approval of the Consent Agenda: Consider Approval of the May 12, 2021 and June 16, 2021 Regular Planning Commission Meeting Minutes--The consent agenda could not be approved due to lack of a quorum.

Unfinished Business

- a. Rainier Oregon Historical Museum Update—City Administrator W. Scott Jorgensen said that after historical society board president Duane Bernard asked the commission about using metal for the museum building, he reached out to City Planner Keshia Owens. In her response, Owens said a variance wouldn't be possible. However, a text amendment could be done to allow the use of metal building materials. Jorgensen said that the board is having a fundraiser at the end of the month, but the project won't happen overnight. There should be adequate time to do a text amendment between now and when it starts. Chair Erin O'Connell said the portions of code regarding the use of high quality material should be maintained. City Recorder Sarah Blodgett said the code could be changed to allow the commission to approve materials. Jorgensen said the standard in code will have to be objective. He asked Blodgett about the process for doing a text amendment. She said it involves public notice and comment and would have to go before the city council. There are costs involved. O'Connell suggested that the commission look at the other parts of the code regulating the waterfront mixed use zone. Jorgensen said he could have that for the commission at its next meeting. O'Connell said the regulations for that zone should be cohesive.

New Business

- a. Ordinance 1081-Repealing Ordinance 974—Jorgensen said he's been speaking with an official at the Department of Land Conservation and Development (DLCD) about updating the city's flood plain ordinances. That official reviewed what the city has and said that it has two sections of code that contradict each other. One was adopted in 1986 and has outdated information. When the city adopted the other in 2010, it didn't repeal the previous ordinance. The official recommended that the first ordinance be repealed. Jorgensen

drafted Ordinance 1081 to repeal that previous ordinance and ran it by that official, the city planner and the city attorney. The DLCDC official had one slight change from his draft, which was included in a handout Jorgensen presented to commissioners. He plans to present it to council at its next meeting, if the commissioners in attendance agree with it. O'Connell said it needs to happen. This came from the state agency that oversees these matters. Commissioner Nina Phillips said that makes her feel more confident about it. They agreed by consensus to have Ordinance 1081 go before the council at its August meeting.

- b. Annexation Policies—Jorgensen said this issue has come up because the city has been getting inquiries from people inside the urban growth boundary but outside of city limits asking to be hooked up to water and sewer. He checked the city's code and saw that it had nothing about annexation. The matter was brought before council at its July meeting. Council unanimously gave staff direction that those properties would have to be annexed into the city in order to receive those services. O'Connell said that is the typical approach that she's seen cities take. It's the only way to grow their tax base. Jorgensen said he had a question about annexations being initiated by citizens versus being initiated by the city. O'Connell said there should be a mechanism for property owners to petition for annexation so they can receive city services. There's a neighborhood in St. Helens that's on septic. There should be a mechanism for forced annexation for those kinds of instances that deal with public health. It would have to be tied to appropriate justification. The St. Helens ordinance that was included in the meeting packet is a good starting point. There's also the issue of how much the city's system development charges are for new hookups into its sewer and water systems. Blodgett said that's typically addressed in master plan updates. Jorgensen said he can ask council for guidance on what policy it wants the city to have on forced annexations. O'Connell said it could be done for fire, life and safety issues. The annexation process in Scappoose is difficult for residents wanting to get into the city. Blodgett said it should be made simple for residents. All agreed by consensus. Blodgett said DLCDC would probably have information on annexation policies. O'Connell said any ordinance the city adopts should clarify that a property would have to be in the urban growth boundary in order to annex. Staff could even ask a city planner to present to the commission about these policies. Some cities require a vote of the citizens before properties can be annexed into city limits.

O'Connell adjourned the meeting at 7:10 p.m.

Erin O'Connell, Chair

Sarah Blodgett, City Recorder



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Urban Design and Planning

Annexation Options

Property owners can initiate their own annexation process if the territory is contiguous to the existing city limits. Multiple parcels can be processed as a single application as long as the parcels are contiguous. There are two ways for a property owner to initiate an annexation.

Expedited annexation

Application can be made if submitted with petitions that have written consent of 100% of property owners and 50% of the registered voters within the affected area. No public hearing is required and City Council makes a decision on its consent or business agenda. A 20-day notice of the decision date is required.

- The request must have consent of 100% of property owners and more than 50% of electors, if any, within the annexation territory. If an affected government or urban services provider objects in writing, the expedited process cannot be used.
- A shorter minimum 20-day notice period to interested parties is allowed instead of the minimum 45-day notice required for non-expedited annexation.
- The report of the annexation has to be made available at least seven days prior to date of decision rather than 15 days that is required for non-expedited annexation.
- Council can only approve the proposal if it meets the approval criteria of Appendix 1 of the Development Code.
- Provisions of adopted plans, including zoning, will be applied to the territory upon an effective annexation.

Public hearing annexation

Application can be made if submitted with petitions that have written consent of property owners of more than 50% of the land in the area and 50% of registered voters within the affected area. A

45-day notice of the City Council hearing is required.

- Can be initiated by City Council or by owners of real property in the area.
- The request must include petitions from both owners of more than 50% of the land in the area and more than 50% of the registered electors in the area.
- Council will hold a public hearing. A minimum 45 day notice of the public hearing is required and an annexation report must be available at least 15 days prior to the hearing.
- Council can only approve the annexation proposal if it meets the approval criteria of Section A.1006 of the Development Code.
- Provisions of adopted plans, including zoning, will be applied to the territory upon an effective annexation.

Procedures

Annexation application packet

1. **Pre-application conference:** An applicant for an annexation must hold a pre-application conference with City staff as required under Section 11.0700 of the Development Code.
2. **Annexation application and fees:** Submittal requirements are listed in Section A.1005 of the Development Code. Fees are listed in the City's fee schedule.
3. **Completeness review:** Staff will review the application for completeness with a determination issued within 30 days.
4. **Noticing:** A notice of the City Council decision date will be mailed by the City to property owners within 300 feet of the proposed annexation. The property will be posted by the applicant, and a notice put in The Gresham Outlook by the City.
5. **Staff report and recommendation:** City staff will issue a report and recommended decision at least 15 days prior to the City Council public hearing or at least seven days prior to the City Council decision date.
6. **City Council decision:** Council will approve or deny the application following a public hearing or by decision in an expedited annexation. The effective date of the annexation is the date of filing with the Secretary of State. This process typically takes two to three weeks following the effective date of the Council decision.

Other annexations

City Council can initiate an annexation; hold a public hearing with appropriate notice and then annex an area if a majority of the electors in the territory to be annexed vote in an election for annexation.

Council can only approve the annexation proposal if it meets the approval criteria of Section A.1006 of the Development Code.

These are two types of annexation that do not require consent by property owners and electors.

Island annexation

The City may annex territory that is surrounded by the corporate boundary of the city. Island annexation might be a needed tool in the new urban areas to prevent disruption of public services. Island annexation must meet the approval criteria of Section A.1006 of the Development Code.

Health hazard abatement

The City may annex a territory if the Department of Health Services declares that the affected territory is a danger to public health. Dangers to public health could include impure or inadequate water systems that expose the public to “communicable or contagious disease-producing organisms” that present a “clear possibility that the public is being exposed to physical suffering or illness.”

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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).

Chapter 18.50
WATERFRONT MIXED USE OVERLAY ZONE (WM OVERLAY)

Sections:

- 18.50.010 Purpose and intent.**
- 18.50.012 Design objectives for framework plan.**
- 18.50.015 Role of the framework plan.**
- 18.50.020 Permitted uses.**
- 18.50.030 Conditional uses.**
- 18.50.040 Development standards.**
- 18.50.050 Design review.**

18.50.010 Purpose and intent.

This overlay zone is intended to accommodate development of a cohesive community within the context of the Rainier mixed use waterfront framework plan. A primarily residential community is envisioned; including a variety of housing types. Public open space is also an important component of the framework plan, including public access to and along the Columbia River. In addition to residential and public uses, other commercial service, retail, office and marine-related retail and recreational uses are permitted to provide market flexibility and the opportunity for mixed use development. Quality building design and a pedestrian-friendly character for streets are also intended. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8), 1998)

18.50.012 Design objectives for framework plan.

The framework plan for the waterfront mixed use overlay zone was developed through a public, collaborative process. The following design objectives shaped the framework plan:

- A. Create a residential community – a place where neighbors know each other.
- B. Provide a variety of housing that balances quality with appropriate pricing.
- C. Provide for mixed use – living, working, and community gathering.
- D. Link the physical design of the community to Rainier's small town character.
- E. Provide public access to, and along, the waterfront.
- F. Provide open spaces and river views.
- G. Coordinate with adjacent park lands and the boat launch.
- H. Design streets that are attractive for walking.
- I. Be flexible – provide for phased development over time. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8.2), 1998)

18.50.015 Role of the framework plan.

The framework plan for the waterfront mixed use overlay zone is attached as Exhibit A to the ordinance codified in this chapter and is incorporated into the zoning ordinance by this reference. The framework plan illustrates the key elements for development in the zone, including the following:

- A. Westerly extension of "A" Street and approximate location of north-south local street connections. Cross-sections for "A" Street and local streets are attached as examples.
- B. Designation of the Riverfront Greenway and Trail. Approximate locations for riverfront access/viewpoints are also shown. A cross-section for the Riverfront Trail is attached as an example.
- C. Identification of a "core area" as the most appropriate location for civic, mixed use development and higher density residential uses to serve and support the adjacent neighborhood areas identified in the framework plan. The core area is also the preferred location for a public park.
- D. Identification of "neighborhood edge" areas as the transition where civic, mixed use and higher density uses are also appropriate, but where design and development needs to promote transition and compatibility between the core and the neighborhoods.

Regulatory elements of the framework plan are implemented through the development standards of this zone (see RMC 18.50.040). An illustrative plan has been prepared to show one approach for development that is consistent with the framework plan. The illustrative plan is not regulatory or binding, and it is intended only as a guide for potential development. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8.3), 1998)

18.50.020 Permitted uses.

The following categories of uses are permitted outright in the waterfront mixed use overlay zone (WM overlay):

A. Residential Uses.

- 1. Detached single-family dwelling (excluding manufactured homes).
- 2. Zero lot line dwelling.
- 3. Attached single-family dwelling.
- 4. Two-family dwelling.
- 5. Multifamily dwelling.
- 6. Senior housing, congregate care, assisted living, adult foster care.

B. Commercial/Office/Public Uses.

- 1. Commercial service uses (for example, barber and beauty shop, laundry, shoe repair, dry cleaner, tailor).
- 2. Commercial retail uses (for example, grocery store, drug store, restaurant, tavern, garden store, department or furniture store, secondhand store), provided no single retail establishment exceeds 20,000 square feet in floor area.
- 3. Professional office or clinic (for example, medical or dental office, tax preparation service, veterinary clinic).

4. General business or corporate office uses (for example, offices of financial, insurance, real estate and government organizations).
5. Tourist-oriented uses (for example, motel/hotel, gift shop).
6. Public park. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8), 1998)

18.50.030 Conditional uses.

The following uses are permitted in the waterfront mixed use overlay zone (WM overlay) when a conditional use permit is approved subject to Chapter 18.130 RMC.

A. Any of the following water-oriented uses:

1. Marina.
2. Boat sales or service.
3. Boat launching facility.
4. Public or private dock.
5. Storage of marine equipment in buildings with less than 5,000 square feet total space.

B. Public use (public parks are permitted).

C. Semipublic use. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8), 1998)

18.50.040 Development standards.

The following development standards apply in the waterfront mixed use overlay zone (WM overlay) to implement the framework plan.

A. Street Connectivity and Formation of Block Required. In order to promote efficient vehicular and pedestrian circulation through the waterfront mixed use overlay zone (WM overlay) and compatibility with the established street grid of Rainier, land divisions and large site developments shall produce complete blocks bounded by a connecting network of public and/or private streets.

1. Block Length and Perimeter. A block length of 320 feet is recommended for compatibility with the established street grid of Rainier. Block lengths shall not exceed 400 feet and the block perimeter shall not exceed 1,200 feet in the waterfront mixed use overlay zone (WM overlay).

2. Exception. The planning commission may grant an exception to the block length and perimeter standard when blocks are divided by one or more pathway(s). Pathways shall be provided at or near midblock where the block length exceeds the 400-foot standards. Pathways shall be located to minimize out-of-direction travel by pedestrians and cyclists.

Additionally, the planning commission may grant an exception to the block length and perimeter standard for publicly owned parks and for blocks in the waterfront mixed use overlay zone (WM overlay) that abut public parks or industrial zones; or for large commercial or residential uses deemed appropriate by the commission.

B. Street Standards. Public and private streets in the waterfront mixed use overlay zone (WM overlay) shall conform to city standards. Private streets are permitted with planning commission approval subject to the following limitations:

1. Private streets shall be built to city standards.
2. Private streets shall include permanent easements for public access.
3. Private streets shall include provisions and an agreement for maintenance.

Alleys are encouraged but not required in the waterfront mixed use overlay zone (WM overlay).

C. Columbia River Greenway and Trail. Increasing public access to and along the Columbia River is one of the key goals of the Rainier waterfront urban renewal plan and the framework plan. As depicted on these plans, development adjacent to the Columbia River shall maintain a 45-foot setback from the riverfront property line. Public dedication of the greenway and trail is preferred. A cross-section for the landscape treatment and trail construction within the greenway is shown in the plan. Access to the greenway trail shall be provided from the end of the north/south streets, as depicted on the framework plan.

D. Development Adjacent to the Greenway. Development adjacent to the greenway shall include appropriate breaks between buildings so as to avoid a “wall” effect. Buildings should not exceed 100 feet in length and should be separated by at least 15 feet along the greenway.

E. Lot Standards. The following lot standards are designed to accommodate a variety of housing and building types in the waterfront mixed use overlay zone (WM overlay).

Land Use	Min. Lot Area	Min. Lot
		Width
Detached SF housing	3,500 sf	35 ft.
Attached SF housing	2,400 sf	24 ft.
Duplex	5,000 sf	50 ft.
MF housing (+ 3 units)	9,000 sf	90 ft.
Commercial/office	No minimum	50 ft.
Public/semipublic	No minimum	50 ft.

F. Residential Densities. To assure efficient use of land in the waterfront mixed use overlay zone (WM overlay), residential projects shall be developed at a minimum density of 10 units per net acre (excluding area devoted to streets). Minimum densities shall be calculated on a project-by-project basis and may include multiple contiguous parcels and phased developments. There are no minimum density requirements when residential units are developed above first floor commercial or office uses.

Maximum density in the waterfront mixed use overlay zone (WM overlay) is 25 units per net acre. Assisted living facilities are not subject to this maximum density, and are limited only by maximum building heights and setbacks.

G. Building Setbacks. Building setbacks provide space for private yards and building separation for fire protection, building maintenance, sunlight and air circulation. Building setbacks can also promote human-scale design and neighborhood security by placing buildings close to and oriented to the street.

1. Front Yard Setbacks – Residential Uses.

- a. A minimum setback of 10 feet is required outside of the core area. A zero setback is allowed in the core area. An unenclosed front porch may encroach into the front yard setback, as long as

it does not encroach into a public utility easement.

b. Residential uses shall not exceed a maximum front yard setback of 25 feet.

c. Garages and carports shall be accessed from alleys or recessed behind the front building elevation by a minimum of two feet.

2. Side and Rear Yard Setbacks – Residential Uses.

a. A minimum side yard setback of five feet is required for detached single-family and multifamily dwellings.

b. A minimum rear yard setback of 10 feet is required for all residential dwellings.

3. Setbacks – Commercial/Office/Public/Semipublic Uses.

a. No minimum front yard setback is required, except as necessary to comply with vision clearance standards.

b. A maximum front yard setback of 25 feet is required. This standard is met when a minimum of 50 percent of the front building elevation is placed 25 feet or closer to the front property line. On parcels with more than one building, this standard applies to the largest building.

c. The maximum front yard setback standard shall not apply to buildings that do not receive the public (e.g., buildings used for storage or housing mechanical equipment, and similar uses).

d. No minimum side or rear yard setback is required, except where such yards abut existing or approved residential uses. In such cases, the side or rear yard requirement shall match the yard requirement for the residential use.

H. Building Heights. In order to provide a step-down in building heights toward the Columbia River, building heights in the east and west neighborhoods shall not exceed two stories or 35 feet to the north of the A Street extension, and shall not exceed four stories or 55 feet to the south of the A Street extension. Buildings in the core area shall not exceed three stories or 45 feet.

I. Building Orientation. The following standards are intended to orient buildings to streets to promote human-scale development, slow traffic, and encourage walking in neighborhoods. Placing residences and other buildings close to the street also encourages security and safety by having more “eyes on the street.” The building orientation standards are applicable to all housing types and to nonresidential buildings.

1. All buildings shall have their primary entrance(s) oriented to the street. Multifamily and commercial building entrances may include entrances to individual units, lobby entrances, or breezeway/courtyard entrances.

2. Off-street parking areas shall not be placed between the primary entrance and the street. Vehicles may be parked in driveways serving detached and attached single-family housing. However, garages must be recessed a minimum of two feet from the front facade of the dwelling, as specified in subsection (G)(1)(c) of this section.

3. The building orientation standards are not applicable to nonresidential buildings which do not receive the public such as storage or utility buildings. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8), 1998)

18.50.050 Design review.

All new development in the waterfront mixed use overlay zone (WM overlay), including single-family housing types, is subject to design review. In addition to the criteria for design review approval set forth in Chapter 18.145 RMC, the following additional criteria are applicable in the waterfront mixed use overlay zone (WM overlay):

A. Consistency with Design Objectives and Framework Plan. The proposed development is consistent with the design objectives and the framework plan for the waterfront mixed use overlay zone.

B. Consistency with Development Standards. The proposed development is consistent with the development standards for the waterfront mixed use overlay zone.

C. Design Guidelines for Residential Buildings. Residential buildings should address the following guidelines:

1. Garage Placement. The garage must not be the dominant feature of the front of the dwelling. Side placement, rear placement, or a recess of two feet minimum are preferred. Overhangs and front porches may be incorporated into addressing this guideline.

2. Quality and Variety of Materials. Buildings should use high quality materials. The following building materials are prohibited in the waterfront mixed use overlay zone (WM overlay):

- a. Cinder block.
- b. Metal.
- c. T1-11 siding.

At least two different types of materials should be provided on the sides of buildings that face streets. Variation in the patterns of the same materials is an acceptable alternative.

3. Porches. Usable front porches (approximately six feet by eight feet minimum) that are covered should be provided on at least 50 percent of the buildings.

4. Roof Pitch. A minimum roof pitch of 4:12 should be provided.

5. Building and Roof Articulation. Exterior offsets, balconies, projections, window reveals, variations in roof pitch and similar elements details should be provided.

6. Variation in Color. Developments should avoid overuse of the same exterior paint colors. As a guideline, color should vary on every block face.

D. Design Guidelines for Civic, Commercial and Mixed-Use Buildings. Civic, commercial and mixed-use buildings should address the following guidelines:

1. Location of Entries. The building orientation standards in this chapter shall be met. On corner lot, corner entrances are encouraged and may substitute for having an separate entry on each street side of the building.

2. Quality and Variety of Materials. The proposed development includes quality building materials. The following building materials are prohibited in the waterfront mixed use overlay zone (WM overlay):

- a. Cinder block.

b. Metal.

c. T1-11 siding.

At least two different types of materials should be provided on the sides of buildings that face streets. Variation in the patterns of the same materials is an acceptable alternative.

3. Weather Protection. Buildings that abut the public sidewalk should provide awnings or canopies along appropriate lengths of the building facade.

4. Building and Roof Articulation. Exterior offsets, balconies, projections, window reveals, variations in roof pitch and similar elements details should be provided.

5. Ground Floor Windows and Doors. Ground floor windows should occupy the majority of the street side facade. A guideline of 60 percent of the length and 25 percent of the first 12 feet of height is suggested.

6. Pedestrian Amenities. Street-side amenities are encouraged. Examples include benches, plazas, planters, seating walls, and public art.

E. Where the standards of the waterfront mixed use overlay zone (WM overlay) conflict with other standards in the zoning ordinance, the land division ordinance or the transportation system plan, the standards of the waterfront mixed use overlay zone (WM overlay) shall control. (Ord. 1020 (Exh. A), 2005; Ord. 974 § 4 (Exh. A.2 § 3.8), 1998)

Mobile Version

