



## Agenda Report 2014-06-16-06

Date: June 9, 2014

To: John Kovash, Mayor  
Members, West Linn City Council

From: Megan Thornton, Assistant City Attorney

Through: Chris Jordan, City Manager *CJ*

Subject: Municipal Code Annexation Ordinance

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### **Purpose**

This ordinance will simplify the annexation process and ensure compliance with state law and the Metro Code.

### **Question(s) for Council:**

Does the City Council wish to simplify its two step annexation process?

### **Public Hearing Required:**

None required.

### **Background & Discussion:**

The Council has not processed an annexation application since 2006. To familiarize the Council with the annexation process, a work session was held on May 5, 2014. At the work session, the Council approved a project to revise the annexation code to simplify the process and eliminate redundancies between the West Linn Municipal Code (WLMC), Community Development Code (CDC), State law and Metro Code. The Council gave specific direction to:

1. State specifically that nothing prohibits the Council from completing Step 1 and Step 2 at the same meeting (See ORD 1625, Section 1, WLMC 2.915(1) for the corresponding amendment),
2. Simplify the notice requirements for Step 2 and require compliance with State law and Metro Code (See ORD 1625, Section 1, WLMC 2.930(2) for the corresponding amendment), and
3. Require a hearing for Step 2 when mandated by State law or Metro Code (See ORD 1625, Section 1, WLMC 2.930(2) for the corresponding amendment).

To simplify the annexation process and eliminate redundancies, WLMC Sections 2.940, 2.950, and 2.960 are recommended for repeal because those sections are repetitive of state law and provide details that do not need to be codified, such as the requirements for explanatory statements. Similarly, WLMC Section 2.955 should be repealed because it is duplicative of CDC 81.055 and creates an opportunity for conflict between the Municipal Code and the CDC. To aid the Council in evaluating these amendments, the "WLMC Annexation Revisions" attachment shows how the annexation provisions will read if the proposed ordinance is adopted.

### **Budget Impact:**

- A simpler process that is completed in one meeting will save staff time and related expenses.

**Council Options:**

1. Move to approve First Reading and set the matter for Second Reading.
2. Move to approve First Reading and if unanimous, move to approve Second Reading and adopt the ordinance.
3. Postpone consideration of the proposed ordinance.

**Staff Recommendation:**

Staff recommends adoption of “An Ordinance Relating to Annexations and Amending West Linn Municipal Code 2.915 Through 2.940, and Repealing WLMC 2.950, 2.955, and 2.960.”

**Potential Motion:**

Council: *Move to approve First Reading of “An Ordinance Relating to Annexations and Amending West Linn Municipal Code 2.915 Through 2.940, and Repealing WLMC 2.950, 2.955, and 2.960,” and set the matter for Second Reading.*

If the motion passes unanimously, the Council may: *Move to approve Second Reading for “An Ordinance Relating to Annexations and Amending West Linn Municipal Code 2.915 Through 2.940, and Repealing WLMC 2.950, 2.955, and 2.960,” and adopt the ordinance.*

**Attachments:**

1. Ordinance 1625: An Ordinance Relating to Annexations and Amending West Linn Municipal Code 2.915 through 2.940, and Repealing WLMC 2.950, 2.955, and 2.960.
2. WLMC Annexation Revisions

## ORDINANCE NO. 1625

### AN ORDINANCE RELATING TO ANNEXATIONS AND AMENDING WEST LINN MUNICIPAL CODE 2.915 THROUGH 2.940, AND REPEALING WLMC 2.950, 2.955, AND 2.960

Annotated to show ~~deletions~~ and additions to the code sections being modified. Deletions are ~~bold lined through~~ and additions are **bold underlined**.

**WHEREAS**, Chapter II, Section 4, of the West Linn City Charter provides:

Powers of the City. The City shall have all powers which the Constitution, statutes and common law of the United States and of this State now or hereafter expressly or implied grant or allow the City, as fully as though this Charter specifically enumerated each of those powers; and

**WHEREAS**, the above referenced grant of power has been broadly interpreted to allow local governments to decide upon the scope of their powers in their charter so that specific statutory authorization is not required for a city to exercise its powers, LaGrande/Astoria v. PERB, 281 Or 137, 142 (1978), aff'd on reh'g 284 Or 173 (1978); and

**WHEREAS**, the Council desires to amend the code to comply with state law and the Metro code;

**WHEREAS**, the proposed amendments simplify the annexation process and make it clear that an annexation can be approved at one public meeting; and

**NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:**

**SECTION 1. Amendments.** West Linn Municipal Code Sections 2.915 [Annexation Purpose Statement] through 2.935 [Submittal Requirements and Deposits] are amended to read as follows:

#### **2.915 Annexation Purpose Statement**

(1) The purpose of West Linn Code Sections 2.915 to 2.940 ~~2.960~~ is to establish a two-step process for ~~consideration of~~ annexation applications requests. The first step ~~is a~~ involves consideration of the land use decision. aspects of the annexation request. The second step ~~is a policy decision to determine if the annexation should be referred involves consideration of other policy issues and referral~~ to the voters. The Step 1 and Step 2 decisions can occur at the same meeting. An annexation to the City shall not be effective unless it is approved by a majority vote among the City's electorate, and ~~is also approved~~ by Metro pursuant to its authority regarding annexations within its boundaries.

(2) The procedures and standards established in this chapter are required for review of proposed annexations in order to:

- (a) Provide adequate public notice, information and sufficient time for public review before annexation hearings and elections; and
- (b) Maximize citizen involvement in the annexation review process;
- ~~(c) Establish a system for measuring the physical, environmental, financial and related social effects of the annexation; and~~
- ~~(d) To fully inform the public of the physical, environmental, financial and related social effects of the annexation.~~

**2.920 Conditions for Annexation – Step 1: Land Use Decision.**

~~(1) Consideration of a proposal to annex property to the City shall follow a two-step process. When an annexation application has been properly initiated pursuant to ORS 222.125, 222.170, 222.111, or 222.840, Step 1 shall include review of the land use aspect of the petition pursuant to Community Development Code Section 81. If the application receives Council approval through the Step 1 process, the Council shall proceed to Step 2. A determination that the application meets the land use requirements does not obligate the City to approve the annexation application and place it on the ballot in Step 2.~~

~~(2) The following conditions must be met as judged by the City Council upon recommendation of the City Planning Director and City Engineer prior to approval of step one processing of any annexation request:~~

- ~~(a) The subject site must be located within the Portland Metropolitan Urban Growth Boundary.~~
- ~~(b) The subject site must have been assigned a City Comprehensive Plan Map designation.~~
- ~~(c) The subject site must be contiguous to the existing City limits, or separated from it only by a public right of way, or a stream, bay, lake or other body of water.~~
- ~~(d) The requirements of Oregon Revised Statutes for initiation of the annexation process are met.~~
- ~~(e) The subject area has been included within each of the adopted City facility master plans and capital improvement plans and the subject area is planned for all needed City infrastructure.~~

~~(3) Prior to the beginning of step two processing of any annexation request, the requestor must verify to the Planning Director that all the prerequisites for step one processing are still satisfied and the annexation request must have received a final step one approval through the land use planning and zoning process as per the provisions of The Community Development Code Chapter 81.~~

**2.930 City Council Annexation Authority – Step 2: Policy Decision**

~~(1) Step 2 of the annexation process involves consideration of is a policy decision, referral to the voters and other policy issues, and shall follow the provisions outlined in Section 2.950 of this chapter. The Council may, in its discretion, pass a resolution placing an annexation request on a ballot before the voters, as required by the City Charter, at any election. The City Council has the authority to approve or deny placing an annexation before the voters based upon, but not limited to, matters such as taxation, infrastructure, environmental impacts, housing supply, school capacity, availability of park land and other considerations deemed by the City Council as relevant.~~

~~(2) A public hearing may be scheduled when required by state law or Metro Code. which any At the hearing, any person may appear and be heard on the question of whether the annexation request should be presented to the voters. Notice of the Step 2 public hearing shall be published in accordance with state law and the Metro Code.~~

~~(3) The City Council may deny an annexation acting in its legislative capacity even after it has approved the annexation application through the Step 1 process. A decision to deny an annexation in Step 2 shall be specifically stated in the record and noted as a legislative act separate and apart from the land use decision in Step 1.~~

**2.935 Submittal Requirements and Deposits: Election Costs**

~~(1) Applications to the City for initiation of annexation proceedings made by individuals shall be pursuant to the provisions set forth in Chapter 81 of the Community Development Code.~~

~~(2) The applicant shall be responsible for all costs incurred by the City in processing the application, including the City's anticipated election costs. In the event that other City items are included in the same election, the Applicant shall be responsible only for a pro-rata portion of any shared costs. If the election is concurrent with the primary or general election of an even-numbered year, the applicant is not responsible for any election costs.~~

**SECTION 2. Repeal.** West Linn Municipal Code Section 2.40 [Annexation Elections] is repealed in its entirety and replaced with the following:

**2.940 Submission of Annexation Reports.**

**The City shall report all changes in the boundaries of the City as required by state law and the Metro Code.**

**SECTION 3. Repeal.** West Linn Municipal Code Sections 2.50 [Annexation Applications], 2.955 [Zoning Designations], and 2.960 [Submission of Annexation Reports] are repealed in their entirety.

**SECTION 4. Severability.** The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

**SECTION 5. Savings.** Notwithstanding this amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced, shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

**SECTION 6. Codification.** Provisions of this Ordinance shall be incorporated in the City Code and the word “ordinance” may be changed to “code”, “article”, “section”, “chapter” or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that any Whereas clauses and boilerplate provisions (i.e. Sections **[3-7]**) need not be codified and the City Recorder or his/her designee is authorized to correct any cross-references and any typographical errors.

**SECTION 7. Effective Date.** Conditions in the City of West Linn are such that this Ordinance is necessary for the immediate preservation of the public health, peace, welfare and safety. An emergency is hereby declared to exist; therefore, this Ordinance shall be in full force and effect after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 2(C) of the City Charter on the 16th day of June, 2014, and duly PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
JOHN KOVASH, MAYOR

ATTEST:

\_\_\_\_\_  
KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

## **WLMC Annexation Revisions**

### **Result of proposed changes from Ordinance 1625**

#### **2.915 Annexation Purpose Statement**

(1) The purpose of West Linn Code Sections 2.915 to 2.940 is to establish a two-step process for annexation applications. The first step is a land use decision. The second step is a policy decision to determine if the annexation should be referred to the voters. The Step 1 and Step 2 decisions can occur at the same meeting. An annexation to the City shall not be effective unless it is approved by a majority vote among the City's electorate and by Metro pursuant to its authority regarding annexations within its boundaries.

(2) The procedures and standards established in this chapter are required for review of proposed annexations in order to:

(a) Provide adequate public notice, information and sufficient time for public review before annexation hearings and elections; and

(b) Maximize citizen involvement in the annexation review process.

#### **2.920 Step 1: Land Use Decision.**

When an annexation application has been properly initiated pursuant to ORS 222.125, 222.170, 222.111, or 222.840, Step 1 shall include review of the land use aspect of the petition pursuant to Community Development Code Section 81. If the application receives Council approval through the Step 1 process, the Council shall proceed to Step 2. A determination that the application meets the land use requirements does not obligate the City to approve the annexation application and place it on the ballot in Step 2.

#### **2.930 Step 2: Policy Decision**

(1) Step 2 of the annexation process is a policy decision. The Council may, in its discretion, pass a resolution placing an annexation request on a ballot before the voters, as required by the City Charter, at any election.

(2) A public hearing may be scheduled when required by state law or Metro Code. At the hearing, any person may appear and be heard on the question of whether the annexation request should be presented to the voters. Notice of the Step 2 public hearing shall be published in accordance with state law and the Metro Code.

(3) The City Council may deny an annexation application acting in its legislative capacity even after it has approved the annexation application through the Step 1 process. A decision to deny an annexation in Step 2 shall be specifically stated in the record and noted as a legislative act separate and apart from the land use decision in Step 1.

#### **2.935 Election Costs**

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#### **2.940 Submission of Annexation Reports.**

The City shall report all changes in the boundaries of the City as required by state law and the Metro Code.