

CHAPTER 165
ANNEXATION PROCEDURES

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165.010. Intent and Purpose. The intent and purpose of this chapter is to establish procedures relating to the annexation of territory into the City of Salem and to ensure the public has adequate information to consider the merits of a proposed annexation at the time of the election. (Ord No. 48-04)

165.020. Definitions. Except where the context otherwise clearly requires, as used in this chapter the following mean:

- (a) “Annexation contract” means a contract between the city and a landowner relating to extraterritorial provision of service and consent to eventual annexation of the property of the landowner.
- (b) “Director” means the Director of Community Development, or the Director’s designee.
- (c) “Enclave” means territory that is completely surrounded by the corporate boundaries of the City of Salem, or by the corporate boundaries of the City of Salem and a river, stream, lake or other body of water.
- (d) “Health hazard” 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 impure or inadequate domestic water; inadequate installations for the disposal or treatment of sewage, garbage or other contaminated or putrefying waste; or inadequate improvements for drainage of surface water and other fluid substances.
- (e) “Person” means a natural person, corporation, limited liability company, partnership, joint venture, trust, co-operative, association, or any other entity in law or fact. (Ord. No. 48-04)

165.030. Initiation of Annexations. Annexation of territory into the City of Salem may be initiated by the City Council upon its own motion, or by a petition submitted to the City Council by owners of real property in the territory proposed to be annexed. (Ord. No. 48-04)

165.040. Enclave Annexations. When a petition for annexation is filed, the Director may include areas

adjacent to the territory proposed to be annexed as part of the proposed annexation if the failure to include the additional territory would result in the creation of an enclave and the requirements for consent elections set forth in ORS Chapter 222 are met, or if the inclusion of the additional territory would eliminate existing enclaves. (Ord. No. 48-04)

165.050. Voter Approval of Annexations; Exempt Annexations.

(a) Except as provided in subsection (b) of this section, all annexations shall be submitted to the voters of the City of Salem for their approval.

(b) Annexations made pursuant to annexation contracts effective prior to May 16, 2000, annexations necessitated by failing septic systems or health hazards, or annexations mandated by state law are exempt from voter approval. (Ord. No. 48-04)

165.060. Annexation Elections. Annexations may be submitted to the voters at a general election or at a special election. (Ord. No. 48-04)

165.070. Pre-Application Conference; Filing Deadline.

(a) Any person who wishes to petition for the annexation of territory shall participate in a pre-application conference not less than sixty days prior to the deadline for filing the petition. The purpose of the pre-application conference shall be to inform the person of the process for annexing territory into the city.

(b) Unless otherwise allowed by the Director, annexation petitions which propose a change to the comprehensive plan or zone designation for the territory pursuant to SRC 165.100(b) shall be filed not less than three hundred and fifteen days prior to the date of the election when the annexation is proposed to be submitted to the voters. Annexation petition which will have the comprehensive plan and zone designations applied pursuant to SRC 165.100(a) shall be filed not less than two hundred and forty days prior to the date of the election when the annexation is proposed to be submitted to the voters. (Ord. No. 48-04)

165.080. Annexation Petitions; Land Use Determination Application; Conceptual Plan.

(a) Petitions for annexation and applications for land use designations shall be on forms promulgated by the Director.

(b) A petition for annexation for which voter approval is required shall be accompanied by:

(1) A legal description of the territory proposed to be annexed, along with documentation of ownership;

(2) Notarized signatures of the necessary number of landowners and voters residing on the territory proposed for annexation as required by state law;

(3) Identification of any territory that could be annexed pursuant to a previously executed annexation contract; and

(4) An application for land use designations shall contain the following:

(A) A notification list of the owners of all real property which is located within 250 feet of the property proposed to be annexed.

(B) A county tax assessor's map showing all tax lots located within 250 feet of the property proposed to be annexed.

(C) A statement demonstrating the availability of water, sewer, drainage, transportation, public safety, park, and school facilities and services needed to serve the proposed development at the maximum density levels allowed or proposed.

(D) If the petitioner proposes a comprehensive plan or zone designation which is different from the existing or equivalent comprehensive plan designation or equivalent zone designation, as set forth in Table 165-1, the land use designation application shall include:

(i) A conceptual plan, drawn to scale, including:

- (a) The proposed zoning for the territory, and, if more than one zone is proposed for the territory, a legal description for each area with the proposed zoning;
 - (b) A site map, showing general circulation patterns, location of land uses by general categories, the anticipated intensity of uses in each category, and approximate acreage for uses in each category. Categories of land uses may be identified by any descriptive system or method generally acceptable by professionals engaged in the production of development master plans;
 - (c) The location of all significant trees within the territory as defined in SRC Chapter 68;
 - (d) The location and proposed changes to any wells, septic tanks, drain fields, and easements within the territory; and
 - (e) The location and proposed changes to creeks, drainage ways and courses, and riparian corridors.
- (ii) Proposed findings demonstrating why comprehensive plan and zone designation criteria are met.
- (5) A consent to the restrictions imposed by City of Salem land use regulations, as defined by Ballot Measure 49, in existence on the date of annexation, and to which the territory becomes subject as a result of the annexation process, along with a waiver for claims under Ballot Measure 49, that could arise out of or result from the enactment or enforcement of any ordinance annexing the territory, or arise out of or result from the application or enforcement of land use regulations in existence upon the date of annexation. If there is more than one “owner,” as defined by Measure 49, of the territory, the consent and waiver shall be executed by all such owners.
- (c) A petition for annexation exempt from voter approval under SRC 165.050(b) shall contain the following:
- (1) A legal description of the property proposed to be annexed, along with documentation of ownership;
 - (2) The notarized signatures of the landowner or owners;
 - (3) A statement from the Oregon Department of Human Services, the Oregon Department of Environmental Quality or the county health department or sanitarian attesting to the failing septic system or health hazard and which otherwise complies with health hazard abatement law relative to annexation, a copy of the annexation contract, or documentation that the annexation is otherwise mandated by state law; and
 - (4) A consent and waiver of Ballot Measure 49 claims, as set forth under subsection (b)(5) of this section.
- (d) If the City Council initiates an annexation at the request of a landowner, and a comprehensive plan or zone designation is proposed which is different from the existing or equivalent comprehensive plan designation or equivalent zone designation, as set forth in Table 165-1, the landowner shall, as a condition of the initiation and within thirty days of the date the City Council initiates the annexation, provide a conceptual plan which complies with subsection (b)(4)(D) of this section. In addition, any annexation initiated upon the request of a landowner shall be specifically conditioned upon the execution of a consent and waiver of Ballot Measure 49 claims, as set forth under subsection (b)(5) of this section. (Ord. No. 48-04; Ord No. 30-11)

165.090. Filing Fees and Election Costs.

- (a) **Filing Fees.** Any person submitting a petition for annexation shall pay a petitioner’s application fee at the time the petition is filed, and such other fees that are required for processing any land use actions or special district withdrawals associated with the annexation. The petitioner’s application fee shall be set by resolution of the City Council. The fees paid pursuant to this subsection shall be non-refundable.

(b) Election Costs.

(1) In addition to the petitioner's application fee and any land use fees, the petitioner shall deposit with the Director a sum sufficient to cover any and all other costs incurred by the City in submitting the annexation to the voters. The deposit shall be based on the petitioner's pro rata share of the estimated cost of placing an annexation measure on the ballot, and of publishing notices and other information related to the election. Any unexpended portion of the deposit shall be refunded to the petitioner following the election.

(2) The deposit shall be made not less than seven business days after the City Council adopts the measure referring the annexation proposal to the voters. If the petitioner fails to make such deposit within seven days, the annexation shall not be referred to the voters.

(3) The petitioner shall execute a consent to lien form to secure payment of all election costs. If the deposit is insufficient to cover the petitioner's pro rata share of the actual costs, an additional sum equal to such amount shall be remitted to the Director no later than fifteen days after the election date. If such amount is not paid within the fifteen day period, the Director shall file an election cost lien in the city lien docket. The election cost lien shall have priority over all other liens, except liens for the payment of taxes, shall bear interest at the legal rate, and shall remain a lien against the property until fully paid or foreclosed, as provided by law.

(4) If an annexation is initiated by the City Council upon the request of any landowner, the landowner shall pay all fees, deposits and costs provided by this subsection, and shall execute a consent to lien form to secure payment of all election costs. If the deposit is insufficient to cover the landowner's pro rata share of the actual costs, an additional sum equal to such amount shall be remitted to the Director no later than fifteen days after the election date. If such amount is not paid within the fifteen day period, the Director shall file an election cost lien in the city lien docket. The election cost lien shall have priority over all other liens, except liens for the payment of taxes, shall bear interest at the legal rate, and shall remain a lien against the property until fully paid or foreclosed, as provided by law.
(Ord. No. 48-04)

165.100. Land Use Designations.

(a) Territory annexed into the city shall be automatically given the city comprehensive plan designation and zoning designation that is the equivalent to the applicable county zoning designations, as set forth in Table 165-1, unless one or more of the following apply:

(1) The petitioner requests a new comprehensive plan designation, or zone designation other than the equivalent city designation in Table 165-1, in the petition for annexation;

(2) The City Council proposes a new comprehensive plan designation, or zone designation other than the equivalent city designation in Table 165-1, in the resolution initiating the annexation; or

(3) The equivalent city designation in Table 165-1 is inconsistent with the Salem Area Comprehensive Plan.

(b) If the new comprehensive plan designation is proposed, or a zoning designation is proposed for the territory that is different from the equivalent designation set forth in Table 165-1, the Planning Commission shall hold a public hearing to review the proposed designation, and shall make a recommendation to the City Council whether, in light of the conceptual plan, to adopt the proposed designation, the equivalent designation, or a different designation. The Planning Commission's review shall be based the following criteria:

(1) Whether the comprehensive plan and zone designation provides for the logical urbanization of land;

(2) Whether the comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;

- (3) Whether the social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and
- (4) Whether it is in the public interest that the proposed change be made. (Ord. No. 48-04)

165.110. Modification of Conceptual Plan after Planning Commission Recommendation.

(a) Notwithstanding any other provision of this chapter, if the Planning Commission fails to recommend the comprehensive plan or zone designation proposed by a petitioner or requested by a landowner, the petitioner or landowner may elect to:

- (1) Modify the conceptual plan prior to hearing before the City Council under SRC 165.130, and propose different uses, development standards, or an alternative conceptual plan which conform to the Planning Commission's recommended comprehensive plan and zone designations;
- (2) Choose to proceed with the annexation under the equivalent land use designations set forth in Table 165-1, without a conceptual plan; or
- (3) Present the original conceptual plan to the City Council.

(b) Notice of the election of one of the options set forth in SRC 165.110 (a) shall be provided, in writing, to the Director not less than sixty days prior to the hearing before the City Council. If the petitioner or landowner chooses to modify the conceptual plan or to submit an alternative conceptual plan, a copy of the modified or alternative conceptual plan shall be provided with the notice of election, along with proposed findings demonstrating that the comprehensive plan and zone designation criteria will be met under the modified or alternative plan. (Ord. No. 48-04)

165.120. Fiscal Impact Statement.

(a) Not less than fourteen days prior to the date of the hearing before the City Council under SRC 165.130, the Director shall prepare a fiscal impact statement, which shall estimate the fiscal impact the proposed annexation would have on the city's general fund. If the proposed annexation includes a conceptual plan, the Director shall base the estimate on the information provided pursuant to SRC 165.080. The methodology for the preparation of the fiscal impact statement shall be adopted by resolution of the City Council.

(b) The Director shall forward the petition to the Salem-Keizer School District for its review, and request that the District submit a report on the fiscal impact of the proposed annexation on the District not less than three weeks prior to the date of the hearing before the City Council under SRC 165.130. (Ord. No. 48-04)

165.130. City Council Review of Proposed Annexations.

(a) **Hearing.** No later than forty-five days prior to the date the proposed annexation must be submitted to the county clerk for inclusion on the ballot, the City Council shall hold a public hearing on each annexation proposal, including the proposed zoning and any comprehensive plan designation for the territory to be annexed, if such designation is different than that automatically applicable under SRC 165.100(a).

(b) **Notice of Hearing.**

(1) At least ten (10) days before the public hearing, notice of the hearing shall be mailed to persons whose property will become an enclave as a result of the approval of the proposed annexation. The notice shall include a description of the proposed annexation, the city and state laws and regulations applicable to enclaved territory, and shall notify the affected property owners of the potential of their property to become an enclave. Failure of a property owner described in this section to receive notice shall not invalidate the annexation of the territory.

(2) At least 10 days before the hearing, notice of the hearing shall be mailed to the person whose property will be annexed, any person who has submitted written or oral evidence or testimony in a timely manner at the Planning Commission evidentiary hearing, any

recognized neighborhood organization for the area adjacent to that proposed to be annexed, and persons who requested notice of the Planning Commission's decision.

(c) Criteria. The City Council shall determine whether the proposed annexation meets the following criteria:

- (1) The proposed land use designations are consistent with the Salem Area Comprehensive Plan and applicable Statewide planning goals;
- (2) The annexation will result in a boundary in which services can be provided in an orderly, efficient, and timely manner;
- (3) The uses and density that will be allowed can be served through the orderly, efficient and timely extension of key urban facilities and services;
- (4) The public interest would be furthered by the referral of the annexation to the voters; and
- (5) For annexations that propose a change in the comprehensive plan designation or a zoning designation that is different from the equivalent zoning designation set forth in Table 165-1, that:
 - (A) The comprehensive plan and zone designation provides for the logical urbanization of land;
 - (B) The comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;
 - (C) Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and
 - (D) It is in the public interest that the proposed change be made.

(d) Decision. Unless the person whose property would be annexed agrees to a longer time period, the City Council shall adopt a decision, supported by findings, within twenty-one days of the hearing. If the annexation proposal would change the comprehensive plan designation or result in a zoning designation that is different from the equivalent zoning designation set forth in Table 165-1, the City Council shall adopt, modify or reject the Planning Commission's recommendation for land use designations, and approve or reject the conceptual plan.

(e) Notice of Decision. Within 5 days of the decision, the Director shall mail written notice of the decision to the person whose property would be annexed, and to any person who participated in the hearing before the City Council, any person who requested notice of the decision, and any recognized neighborhood organization for any area adjacent to the area proposed to be annexed. The notice shall summarize the decision of the City Council and explain the appeal rights. (Ord No. 48-04; Ord No. 115-07)

165.140. Special District Withdrawal. When withdrawal from a special service district is not automatic, the City Council shall decide on withdrawal from those special service districts. The withdrawals shall be made according to applicable state statutes governing the specific withdrawal. (Ord. No. 48-04)

165.150. Referral to Voters.

- (a) The City Council may refer a proposed annexation to the voters at the next available election, if it finds that the proposed annexation satisfies the criteria set forth under SRC 165.130(c).
- (b) In the event any appeal is filed based on the City Council's decision under SRC 165.130(d), then the annexation may not be referred until the next available election occurring after a final decision is rendered on the appeal.
- (c) Any measure submitting a petitioner-initiated annexation or an annexation that was initiated by the City Council at the request of a landowner to the voters shall contain the condition that the annexation is conditioned upon substantial conformance with the conceptual plan approved by the City Council under SRC 165.130(d). (Ord. No. 48-04)

165.160. Explanatory Statement; Fact Sheet.

(a) For any annexation which requires voter approval, the Director shall prepare an explanatory statement, which should include, in addition to any other information required by state of Oregon elections law, the following information:

- (1) The location of the territory proposed for annexation;
- (2) The proposed Salem Area Comprehensive Plan designation and zoning for the territory, including the uses permitted and density available under the comprehensive plan, zoning designation, and, if applicable, the conceptual plan; and
- (3) A statement supporting of the adequacy of public facilities to serve the territory and the estimated fiscal impact of the development proposed for territory.

(b) The Director shall prepare a fact sheet for each annexation proposal, to be made available to the voters not less than twenty days prior to the election. This fact sheet shall be approved by the City Council prior to its public distribution, and shall include an easily understandable summary of all relevant information required by SRC 165.080. (Ord. No. 48-04)

165.170. Effect of Annexation on Land Use Designations. The land use designations which are approved as part of the referral process shall be binding for five years after annexation, unless the landowner can show that substantial changes in the social, economic, and demographic patterns of the nearby vicinity have so altered since the date of the annexation that the current designations are no longer in the public interest, and that such changes could not have been anticipated prior to the time the annexation was referred to the voters. (Ord. No. 48-04)

165.180. Addition of Annexed Areas to Official Map. When an annexation of territory to the City of Salem becomes final and effective, the Director shall add the property to the official zoning map, along with the zoning and comprehensive plan designations. The official zoning map shall be annotated to the effect that the territory was annexed, and include a citation to the action annexing the property and establishing the designations. The addition to the official zoning map shall be certified and filed in the manner as set forth in SRC 113.030. (Ord. No. 48-04)

165.190. Conceptual Plan Conformance.

(a) Except as provided in this section, development of the property shall be in substantial conformance with any conceptual plan approved under SRC 165.080. For the purposes of this section, development is in substantial conformance with a conceptual plan if the development:

- (1) Is consistent with the character and intent of the conceptual plan;
- (2) The impacts from the development, including but not limited to, noise, vibration, dust, odor, or fumes, detectable at the property line will not exceed the maximums typical for the categories of uses proposed in the conceptual plan;
- (3) The number and types of vehicular trips to and from the site will not exceed the maximums typical for the categories of uses proposed in the conceptual plan; and
- (4) That the amount and types of outside storage, loading, and parking will not exceed the maximums typical for the categories of uses proposed in the conceptual plan.

(b) If proposed development of the property is not in substantial conformance with the conceptual plan approved under SRC 165.080, on application the Director shall approve the substitution of a modified or alternative plan if the landowner demonstrates the plan complies with the land use and development regulations applicable to the property, the plan is consistent with the character of, and development patterns in, the surrounding area and the plan minimizes any reasonably likely adverse impacts on the surrounding area.

(c) The Director may approve changes to a conceptual plan, if such changes are necessary to comply with land use and development regulations in effect at the time development occurs, to comply with conditions of approval imposed as part of a land use decision or to comply with any permit or license required for development to occur, and may impose conditions necessary to

minimize reasonably likely adverse impacts resulting from revisions to the conceptual plan, or the substitution of a new conceptual plan.

(d) The Director's decision to approve or deny a modified or alternative conceptual plan shall be appealable to the hearings officer, as provided in SRC Chapter 300. (Ord. No. 48-04; Ord No. 1-10)

165.200. Effect of Failure of Annexation Proposal on Conceptual Plan. A landowner acquires no rights to a conceptual plan, and if the annexation proposal fails to win approval by the voters, any conceptual plan submitted as part of a new proposal to annex the same property shall be treated as a new plan. (Ord. No. 48-04)

**Table 165-1
Land Use Designations**

POLK COUNTY:

Polk County/City SACP Designation	Polk County Zone	Equivalent City Zone
Developing Residential	SR (Suburban Residential) AR-5 (Acreage Residential - 5 Acres)	RA (Residential Agriculture)
Single Family Residential	SR (Suburban Residential)	RS (Single Family Residential)
Multi-Family Residential	SR (Suburban Residential)	RM1 (Multiple Family Residential)
Industrial	IP (Industrial Park)	IP (Industrial Park)

MARION COUNTY:

Marion County/City SACP Designation	Marion County Zone	Equivalent City Zone
Developing Residential	UT (Urban Transition) UTF (Urban Transition Farm) UD (Urban Development) RS (Single Family Residential)	RA (Residential Agriculture) RS (Single Family Residential)
Single-Family Residential	RS (Single Family Residential) UD (Urban Development)	RS (Single Family Residential)
Multi-Family Residential	RL (Limited Multi-Family Residential)	RM1 (Multiple Family Residential)
Multi-Family Residential	RM (Multiple-Family Residential)	RM1 (Multiple Family Residential) RM2 (Multiple Family Residential)
Commercial	CO (Commercial Office)	CO (Commercial Office)
Commercial	CR (Commercial Retail)	CR (Retail Commercial)
Commercial	CG (Commercial General)	CG (General Commercial)
Industrial-Commercial	HC (Highway Commercial) IC (Industrial Commercial)	IC (Industrial Commercial)
Industrial	IP (Industrial Park)	IP (Industrial Park)
Industrial	IG (General Industrial)	IG (General Industrial)
Industrial	IH (Heavy Industrial)	II (Intensive Industrial)
Community Service Parks, Open Space and Outdoor Recreation	P (Public)	P (Public Use)

(Ord. No. 48-04)

