

## ORDINANCE NO. NS - 2302

**AN ORDINANCE AMENDING BEND DEVELOPMENT CODE CHAPTERS 1.2, DEFINITIONS, 2.0, LAND USE DISTRICT ADMINISTRATION, 3.4, PUBLIC IMPROVEMENT STANDARDS, 4.1, DEVELOPMENT REVIEW AND PROCEDURES, AND 4.6, LAND USE DISTRICT MAP AND TEXT AMENDMENTS AND CREATING CHAPTER 4.9, ANNEXATIONS.**

### Findings:

- A. The application was processed in accordance with Bend Development Code (BDC) 4.1.500. The City provided timely and sufficient notice of the legislative changes pursuant to Section 4.1.515 of the Bend Development Code.
- B. The purpose of BDC Chapter 4.9, Annexations is to establish procedures and criteria for annexation under the provisions of the Oregon Revised Statutes including, but not limited to, Oregon Revised Statutes (ORS) Chapter 222.
- C. The City submitted a Notice of Proposed Amendment to the Oregon Department of Land Conservation and Development on October 4, 2017.
- D. The City coordinated with the various affected public entities and irrigation districts and responded to public comment on the proposed draft, as set forth in the staff Issue Summary under community outreach, which is incorporated by reference into these Findings.
- E. Notice of the November 13, 2017, Planning Commission public hearing and of the December 6, 2017, City Council public hearing was printed in the Bend Bulletin on October 22, 2017.
- F. The Planning Commission reviewed the proposed amendments during a work session on October 23, 2017, and held a public hearing on November 13, 2017, to accept testimony on the request. At the conclusion of the hearing, the Planning Commission voted to recommend the proposed text amendments be approved by the City Council.
- G. The City Council held a public hearing on December 6, 2017 to accept evidence, receive public testimony and consider the Planning Commission's recommendation. The City Council found that the text amendments satisfy the criteria for approval contained in Section 4.6.200 of the Bend Development Code and voted on the amendments to the Bend Development Code.
- H. At the first reading of the Ordinance on December 6, 2017, the Council approved an amendment to the section on the removal of irrigation district water rights after discussing a concern that the transition to domestic water could in some circumstances increase costs to public entities such as schools and parks funded by taxpayers.
- I. On December 20, 2017, the motion for a second reading failed after further discussion by the City Council, because a majority found that the exemption language on the removal of irrigation district water rights did not sufficiently reflect the City's policy goal

of minimizing the use of irrigation water in annexed areas except in extremely limited circumstances. The Council then discussed and conducted a new first reading to the approval criteria to confirm and clarify the intent that (1) irrigation water rights should normally be transferred as set forth in the code, consistent with the urbanization of the land, and (2) any limited exemption is only at Council's discretion, with the burden on the property owner requesting the exemption to demonstrate that the continued use of irrigation water is consistent with the Comprehensive Plan policies, and meets one or more of the listed discretionary criteria.

**Based on these findings, THE CITY OF BEND ORDAINS AS FOLLOWS:**

Section 1. The Bend Development Code is amended as depicted below in Exhibit A.

Section 2. In addition to the findings set forth above, the City Council adopts the findings in Exhibit B.

First Reading: December 20, 2017

Second reading and adoption by roll call vote: January 3, 2018

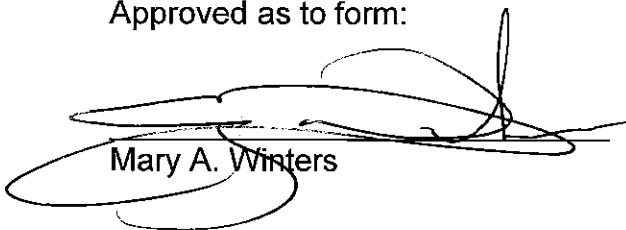
YES:	Casey Roats, Mayor	NO: NONE
	Sally Russell	
	Bill Moseley	
	Bruce Abernethy	
	Nathan Boddie	
	Justin Livingston	
	Barb Campbell	

  
\_\_\_\_\_  
Casey Roats, Mayor

Attest:

  
\_\_\_\_\_  
Robyn Christie, City Recorder

Approved as to form:

  
\_\_\_\_\_  
Mary A. Winters

**Draft Development Code Update**

January 3, 2018

Prepared by:

Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in ~~strikethrough~~ typeface is proposed to be deleted.

\*\*\*Indicates where text from the existing code has been omitted because it will remain unchanged.

Staff comments are ***bold and italicized***

**Chapter 1.2  
DEFINITIONS**

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Annexation means the process by which a municipality, upon meeting certain requirements, expands its corporate limits. ***(Consistent with Charter)***

Annexation agreement means a written agreement between the City and owners of land requesting annexation that states the terms, conditions and obligations of the parties to extend public facilities and public services and mitigate public facility and public service impacts to the City associated with the annexation and future development of the property. The agreement may be used to ensure annexation is consistent with the Bend Comprehensive Plan, Area Plans and/or Master Plans.

Annexation contract means a contract between a city and a landowner containing the landowner's consent to eventual annexation of the landowner's property in return for extraterritorial services. The contract will be recorded and will be binding on all successors with an interest in that property. ***(Consistent with ORS 222.115)***

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Area Plan means a plan adopted by the City Council for a specific geographic area, including but not limited to, certain designated UGB Expansion Areas and Opportunity Areas, that implements the applicable goals and policies of the Bend Comprehensive Plan, coordinates development, and provides flexibility to tailor land use regulations, and transportation and infrastructure plans to serve the land uses within the plan area.

Area Plan, Framework Level means a conceptual plan that includes major transportation, sanitary sewer and water network layout and general land use arrangements consistent with the Bend Comprehensive Plan.

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Cherry stem annexation means the bulk of the annexed property (the "cherry") is contiguous to the City by a narrow "stem" which is usually, but not necessarily, a right-of-way.

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**Comprehensive Plan** means the duly adopted and acknowledged Bend Comprehensive Plan including appendices adopted and acknowledged as part of the Comprehensive Plan.

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**Contiguous** means ~~that which touches or connects, including that which only connects or touches a common point; the touching together of two or more tracts of land which lie alongside one another or which touch or connect with one another for any length or distance whatsoever, no matter how finite.~~ having a common boundary, including a boundary that only touches a common point. For purposes of annexation, contiguous also means a property or group of adjacent properties, including public right-of-way to be annexed, that touch the city limits at any point along any exterior boundary of the territory to be annexed or that is separated from the city limits only by a public right-of-way or body of water. (Consistent with ORS 222.111)

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**Development application, Type III** means a development application where the final decision is made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial procedures required and described in BDC 4.1.800. The City Council is the final decision maker in Type III development applications that require the adoption of an ordinance. Type III applications are identified in Table 4.1.1600 and generally meet the factors for Type III quasi-judicial decisions in BDC 4.1.426. ~~The City Council is the final decision maker in Type III development applications that require the adoption of an ordinance.~~

**Development application, Type IV** means ~~a legislative decision that is made after public notice, public hearings, and a recommendation by the Planning Commission to the City Council where the final decision is made by the City Council after a public hearing following the legislative procedures required and described in BDC 4.1.500.~~ Type IV applications are identified in Table 4.1.1600. Such applications generally involve broad public policy or discretionary decisions that apply to other than an individual property or small number of properties, and do not meet the factors for Type III quasi-judicial decisions in BDC 4.1.426. ~~Type IV applications are identified in Table 4.1.1600.~~

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**Elector** means an individual qualified to vote under section 2, Article II, of the Oregon Constitution.

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Expansion Area means areas within the UGB, but outside of city limits, designated as expansion areas in the Bend Comprehensive Plan in Figure 11-4.

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Extraterritorial Connection of Service means the connection of water or sanitary sewer service to developed property located outside the City limits and within the UGB.

Extraterritorial Extension of a Facility means the extension of a water or sanitary sewer line outside the City limits to serve an area within the UGB.

Extraterritorial Service/Facility Contract means a contract between the owner of property outside the city limits proposed to be served with water and/or sewer service and the City specifying and identifying service provisions, obligations of the City and cost obligations of the owner of the property.

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Opportunity Area means locations within the City, as shown in the Bend Comprehensive Plan in Figure 11-1, that are appropriate to focus new growth due to their location, zoning (existing or planned), amount of vacant or underdeveloped land, and/or proximity to urban services.

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**Owner** means the owner(s) of the title to real property on the most recent deed recorded with the County Clerk or the authorized agent who has written notarized authorization, or the contract purchaser of real property of record as shown on the last available complete tax assessment roll or County Clerk's records. Owner does not include an interest created for security purposes. For purposes of annexation, owner means a legal owner of record, or where a recorded land sale contract is in force, a purchaser under the land sale contract.

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## Chapter 2.0 LAND USE DISTRICT ADMINISTRATION

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### 2.0.300 Determination of Land Use District Boundaries.

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C. Zoning of Annexed Areas. If a zoning reclassification for lands annexed to the City of Bend is necessary, said lands shall will be reclassified to a zone consistent with the Bend Comprehensive Plan automatically upon annexation after hearing and recommendation by the Planning Commission to the City Council. Any conditions, limitations or restrictions previously applied by the County to regulate a development of land annexed to the City shall will continue to apply until replaced by the City. Where appropriate, the City may continue any restrictions, limitations and/or conditions and enforce ~~the same as if applied by the City~~ them pursuant to the effective ordinances codes and its procedures. See also BDC Chapter 4.9, Annexations.

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### Chapter 3.4 PUBLIC IMPROVEMENT STANDARDS

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#### 3.4.300 Public Use Areas.

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#### D. ~~Additional Considerations for Future Park Development.~~

- ~~1. All lots or parcels that are developed with residential structures shall pay an applicable system development charge for park development as provided for under BC Chapter 12.10 and ORS 223.297 through 223.314. The amount of the system development charge shall be pursuant to a Bend Metro Parks and Recreation District resolution. The system development charge shall be payable at the time of issuance of the building permit. *(This is addressed in BC Chapter 12)*~~
- ~~2. As a condition of approval, the land owner of a proposed development of land lying within the Bend Urban Growth Boundary, but outside the boundaries of the Bend Metro Park and Recreation District, shall be required to complete an annexation into the Bend Metro Park and Recreation District as a condition of approval for any development, building permit, land use or City annexation. *(Added a different requirement in BDC 4.9.500)*~~

#### 3.4.400 Sanitary Sewer and Water Service Improvements.

A. Sewers and Water Mains Required. Sanitary sewers and water mains shall must be installed to serve each new development and to connect developments to existing mains in accordance with the City's construction specifications as described in the City of Bend Standards and Specifications document and the applicable Bend Comprehensive Plan policies.

- B. Sewer and Water Plan Approval. Construction of sewer and water improvements shall cannot commence until the City Engineer has approved all sanitary sewer and water plans in conformance with City of Bend Standards and Specifications.
- C. Public Facility Plan Improvements. Proposed sewer and water systems shall must be sized to accommodate additional development within the area as projected by the Water and Sewer Public Facility Plans. The developer may be entitled to system development charge credits and reimbursement for the improvements if eligible under the applicable provisions of the Bend Code.
- D. Inadequate Capacity. Development may be restricted by the City where a deficiency exists in the existing water or sewer system that cannot be rectified by the development and which, if not rectified, will result in a threat to public health or safety, or surcharging of existing mains, or violations of State or Federal standards pertaining to operation of domestic water and sanitary sewer treatment systems.
- E. Sewer Collection Service outside the Bend Urban Growth Boundary (UGB). The City may establish sewer collection or treatment facilities outside the Bend UGB, including, but not limited to, the extension of sewer interceptor lines to serve lands in the UGB more efficiently by traversing outside the Bend UGB, or to connect to treatment facilities outside of the Bend UGB. Service connections to these facilities may only be allowed in cases where either the Oregon Department of Environmental Quality or Oregon Health Division determines a public health hazard exists and service is provided consistent with the Oregon Administrative Rules, 660-011.

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## Chapter 4.1

### DEVELOPMENT REVIEW AND PROCEDURES

#### 4.1.426 Type III – Quasi-Judicial Procedures.

A. Quasi-judicial decisions bear different aspects than Type IV legislative decisions. A request will generally be considered a quasi-judicial process if it involves the following factors:

1. The process bound to result in a decision;
2. The decision is bound to apply pre-existing criteria to concrete facts; and
3. The action is customarily directed at a closely-circumscribed factual situation or small number of persons.

Although no factor is considered determinative and each must be weighed, the more definitively these factors are answered affirmatively, the more it will be considered a quasi-judicial decision.

B. Type III decisions are made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial hearings procedures of BDC 4.1.800, except the City Council is the sole review authority for

annexations. The City Council is the final decision maker in Type III development applications that require the adoption of an ordinance.

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#### **4.1.505 Type IV Applications.**

Legislative decisions are made after public notice, public hearings and a recommendation by the Planning Commission to the City Council, except the City Council is the sole review authority for annexations. ~~Such applications generally involve broad public policy decisions that apply to other than an individual property.~~

#### **4.1.510 Hearing Required.**

No legislative change shall ~~can~~ be adopted without review by the Planning Commission and a final public hearing before the City Council, except the City Council is the sole review authority for annexations. Public hearings ~~before the Planning Commission shall be~~ are set at the discretion of the Development Services Director, unless otherwise required by State law.

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#### **4.1.525 Review Authority.**

Any A Type IV change shall ~~must~~ be reviewed by the Planning Commission prior to action being taken by the City Council, except the City Council is the sole review authority for annexations.

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#### **4.1.815 Hearings Body.**

A. The following shall must serve as the Hearings Body as determined by the Development Services Director:

1. Hearings Officer.
2. Planning Commission, for matters of interpretation of this code, appeals of Type II decisions, where the Hearings Officer cannot hear the matter due to a conflict of interest, or as otherwise specified by provisions of City code.
3. City Council subject to BDC 4.1.1100, Appeals.
4. City Council for annexation applications subject to BDC Chapter 4.9, Annexations.

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**4.1.1310 Expiration of Approval**

**A. Scope.**

1. Except as otherwise provided herein, this section must apply to and describe the duration of all development approvals provided for under this code.
2. This section does not apply to:
  - a. Those determinations made by declaratory ruling, such as verifications of nonconforming uses, and lot of record determinations ~~and expiration determinations~~ that involve a determination of the legal status of a property, ~~land use or land use permit~~ rather than whether a particular application for a specific land use meets the applicable standards of the code zoning ordinance. Such determinations, ~~whether favorable or not to the applicant or land owner, must be~~ are final unless appealed and are not must not be subject to any time limits;
  - b. Temporary use permits of all kinds, which are governed by applicable ordinance provisions specifying the duration of such permits;
  - c. Quasi-judicial and legislative plan and map amendments; ~~or~~
  - d. Master plans approved after April 14, 2017, which are governed by BDC Chapter 4.5, Master Planning and Development Alternatives; or
  - e. Annexations.

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**4.1.1600 Summary of Development Application Types.**

There are four types of procedures: Type I, II, III, and IV. Table 4.1.1600 lists the City's development applications and their required types of procedure(s).

**Table 4.1.1600  
Summary of Development Application Types**

Development Application	Type I*	Type II*	Type III	Type IV
<u>Extraterritorial Extension and/or Connection of Water and Sewer Service.</u>			<u>X</u>	
<u>Annexation</u>			<u>X</u>	<u>X</u>

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**Chapter 4.6**  
**LAND USE DISTRICT MAP AND TEXT AMENDMENTS**

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**4.6.600 Transportation Planning Rule Compliance.**

When a development application includes a proposed Comprehensive Plan amendment or ~~land use district change,~~ or ~~both annexation,~~ the proposal shall must be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.

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**Chapter 4.9**  
**ANNEXATIONS**

**4.9.100 Annexation**

**4.9.200 Applicability**

**4.9.300 Review Process.**

**4.9.400 Initiation Procedures.**

**4.9.500 Submittal Requirements.**

**4.9.600 Approval Criteria.**

**4.9.700 Zoning of Annexed Areas.**

**4.9.800 Effective Date and Notice of Approved Annexation.**

**4.9.900 Extraterritorial Extension and/or Connection of Water and Sewer Services.**

**4.9.100 Purpose.**

The purpose of this chapter is to establish procedures and criteria for annexation under the provisions of the Oregon Revised Statutes including, but not limited to, ORS Chapter 222. This chapter is intended to achieve orderly and efficient annexation of land to the City that will result in providing a complete range of public services and public facilities, as defined in this Code, for the annexed territory and to ensure consistency with the Bend Comprehensive Plan.

**4.9.200 Applicability.**

Land to be annexed must be contiguous to the existing City limits.

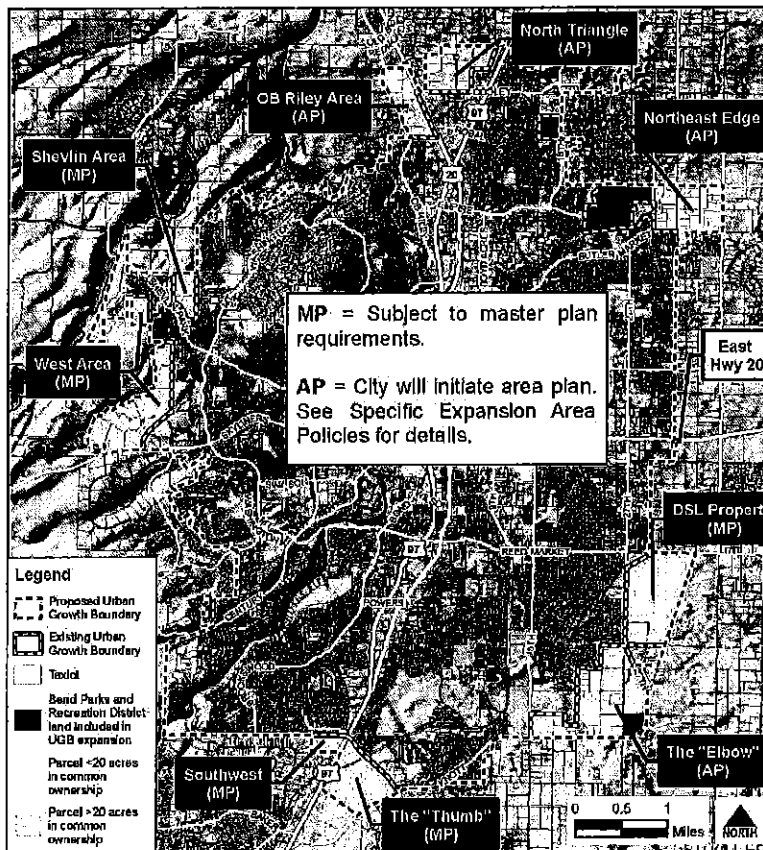
**4.9.300 Review Processes.**

**A. Annexation.** The following general processes apply to all annexation proposals:

1. Annexations are reviewed using the Type III or Type IV process as determined by the City, based on a consideration of the factors for treating an application as quasi-judicial or legislative. Since annexations are a jurisdictional transfer, the City Council is the sole review authority.
2. City Council approval of annexations will be by ordinance.
3. Notice of the City Council hearing to consider the annexation proposal must follow the notification process required for the Type III or Type IV application, except a notice of the hearing must be published in a newspaper of general circulation in the City once each week for two successive weeks prior to the day of hearing, and notices of the hearing must be posted in four public places in the City for a like period.

**B. Area and Master Planning.** Unless exempted in BDC 4.9.300(B)(1), Expansion Areas as shown in Figure 4.9.300 will require Area and/or Master Plan approval prior to or concurrently with annexation. The exemptions to master planning in BDC chapter 4.5, Master Planning and Development Alternatives are not applicable to properties in the Urbanizable Area (UA) District. Development in Expansion Areas must comply with the applicable Bend Comprehensive Plan Specific Expansion Area Policies in Table 4.9.300.

**Figure 4.9.300**  
**Expansion Areas**



**Table 4.9.300 - Specific Expansion Area Policies**

<u>Expansion Area</u>	<u>Bend Comprehensive Plan Specific Expansion Area Policies</u>
<u>Northeast – Butler Market Village</u>	<u>11-56 through 11-63</u>
<u>East Highway 20</u>	<u>11-64</u>
<u>DSL Property</u>	<u>11-65 through 11-74</u>
<u>The Elbow</u>	<u>11- 75 through 11-84</u>
<u>The Thumb</u>	<u>11-85 through 11-91</u>
<u>Southwest</u>	<u>11-92 through 11-99</u>
<u>West Area</u>	<u>11-100 through 11-108</u>
<u>Shevlin Area</u>	<u>11-109 through 11-115</u>
<u>OB Riley Area</u>	<u>11-116 through 11-121</u>
<u>North Triangle</u>	<u>11-122 through 11-131</u>

**1. Exemptions from Area and Master Planning.**

- a. Land not subject to an Area Plan or Master Plan as shown in Figure 4.9.300, Expansion Areas.
- b. Public elementary schools on lots or parcels smaller than 20 acres. Notwithstanding, BDC 3.4.400(A), an interim septic system may be installed if approved by the Department of Environmental Quality and the School District agrees to connect to the sewer system when it becomes available. Applicant must submit the following in addition to the requirements of BDC Chapter 4.7, Transportation Analysis:
  - i. An analysis of walking, biking and transit facilities to destinations within the UGB for a distance of one mile from the boundary of the school site along and across arterial and collector roadways to accommodate safe, accessible and convenient access to and from the school. Based on the analysis, the City may require, through an annexation agreement or other binding mechanism, improvements to ensure safe and accessible paths of travel to and from the school, which may include walking, biking, provision of transit stops and/ accessibility improvements, including compliant curb ramps along the access routes.
- c. City initiated annexations of property intended for uses such as publicly owned rights-of-way or City initiated annexation of additional lands brought into the Urban Growth Boundary for affordable or market rate housing, in programs such as authorized under Oregon House Bill 4079, or other specified uses as authorized by Oregon statute.

d. For areas subject to these exemptions, applicants may submit annexation and development applications for processing concurrently under the anticipated zoning district. Any development approvals will be final decisions for processing purposes but will not be effective until completion of annexation.

#### **4.9.400 Initiation Procedures.**

- A. An annexation proposal for the contiguous territory proposed to be annexed may be initiated by petition in compliance with one of the following initiation procedures:
1. All of the owners of land in the contiguous territory proposed to be annexed and not less than 50% of the electors, if any, residing in the territory, consent in writing to the annexation of their land in the territory and file a statement of their consent with the City;
  2. A majority of the electors registered in the contiguous territory proposed to be annexed consent in writing to the annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the City; or
  3. More than half the owners of land in the contiguous territory proposed to be annexed, who also own more than half the land in the contiguous territory and of real property therein representing more than half the assessed value of all real property in the contiguous territory, consent in writing to the annexation of their land in the territory and file a statement of their consent with the City.
- B. Statements of consent to annexation which are filed within any one-year period are effective and are deemed to be submitted with the petition required in subsection (A) of this section, unless a separate written agreement waiving the one-year period or prescribing some other period of time has been entered into between an owner of land or an elector and the city. (Consistent with ORS 222.173)
- C. An annexation proposal may be initiated by City Council resolution. The Council may terminate proceedings under this section at any time.
- D. An annexation proposal may be initiated pursuant to the state law Health Hazard Abatement annexation process.

#### **4.9.500 Submittal Requirements.**

- A. The application must include:
1. A completed and signed annexation application packet on forms provided by the City.
  2. A petition including the statement of consent, on City forms, completed by property owners and/or electors residing in the territory that meets the requirements of BDC 4.9.400, Initiation Procedures.
  3. Legal description of the territory including abutting right-of-way to be annexed and a boundary survey certified by a registered engineer or surveyor.

4. A map showing the territory including abutting right-of-way to be annexed and properties within 300 feet of the territory.
5. A narrative which addresses the approval criteria in BDC 4.9.600 and the requirements of BDC 4.9.300(B).
6. A letter or other written documentation from the Bend Park and Recreation District which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails.
7. A completed and signed Bend Park and Recreation District Annexation Agreement, unless the property(s) to be annexed is already located within the Bend Park and Recreation District.
8. A letter or other written documentation from the Bend-La Pine School District which indicates that the applicant has met with the District to discuss the proposed annexation and provided the District an opportunity to review and comment on the proposed annexation.
9. Territories with irrigation district water rights or other irrigation district facilities must include the following:
  - a. A map of all appurtenant water rights.
  - b. A surveyed map of any district facility (e.g., canal, head gate, and crossing) that clearly identifies easements, right-of-ways, access roads, etc. for any conveyance facilities that may remain that are either irrigation district owned or privately owned on the property upon annexation.
  - c. A signed statement by the applicant, including any letters or other written documentation provided by the irrigation district, confirming that the applicant has met with the irrigation district to discuss the proposed annexation and the extent to which any issues identified in 4.9.600(A)(6) have been resolved or if they have not yet been resolved, setting forth a plan with a timeline to resolve any issues.
10. If the City has not yet amended its public facilities and transportation plans for the affected expansion area, inclusion of an applicant initiated amendment to the relevant plan(s) or other evidence that the necessary infrastructure planning under statewide planning Goals 11 and 12 will take place prior to or concurrently with annexation.

#### **4.9.600 Approval Criteria.**

- A. The City Council may approve, or approve with conditions, the proposed annexation application if all of the following criteria are met:
1. The annexation proposal is consistent with the Bend Comprehensive Plan policies and Plan designations applicable to the territory as determined by the Planning Director or designee.
  2. The annexation proposal is consistent with an approved Area Plan and/or Master Plan, unless exempted in BDC 4.9.300(B)(1).
  3. The proposal demonstrates how the annexed territory is capable of being served by public facilities and

services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, transportation, schools, and parks, consistent with the City's adopted public facility plans, transportation system plan, and applicable district plans, either as provided in an applicable Area or Master Plan or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner.

4. The proposal demonstrates how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis for analysis and mitigation of transportation impacts.
5. Owner(s) have committed to transfer all irrigation district water rights from the property, unless exempted in BDC 4.9.600(A)(5)(a)(i). The timing of the transfer of irrigation district water rights may be worked out between the owner(s) and the irrigation district, but in any event, the transfer must occur prior to the platting of a land division or prior to certification of final occupancy for developments subject to Site Plan Review, whichever occurs first. For phased subdivisions or developments, however, the transfer may occur by individual phase prior to the platting of each phase or prior to certification of final occupancy of the development on each phase.
  - a. Exemption.
    - i. In limited instances where the City Council finds that continued use of irrigation district water rights will not conflict with the Bend Comprehensive Plan Specific Expansion Area Policies for the land to be annexed and the transition to urban land uses, an Owner may continue to use the irrigation district water rights until certain events occur or certain conditions are met as set forth in a written agreement. Council may also consider, in its discretion, whether the property owner has satisfactorily shown that continued use of irrigation water would be more efficient based on the size of the lot or parcel, lack of environmental harm and sustainable use of water, protection of public health, or cost to the city or other public entities.
6. Sufficient evidence acceptable to the City has been provided demonstrating that the irrigation district had an opportunity to review the layout and design for any impacts on irrigation district conveyance facilities and to recommend reasonable protections for such facilities consistent with the irrigation district's adopted rules and regulations, System Improvement Plans and/or development policies.
7. The proposal demonstrates that approval of the annexation and zoning districts that implement the underlying Bend Comprehensive Plan map designations is consistent with the provisions of BDC 4.6.600, Transportation Planning Rule Compliance.

8. The proposal demonstrates how rights-of-way will be improved to urban standards as determined by the City, including rights-of-way in cherry stem annexations.

#### **4.9.700 Zoning of Annexed Areas.**

The Bend Comprehensive Plan map provides for the future City zoning classifications of all property within the City's Urbanizable Area (UA) District. On the date the annexation becomes effective, the UA District will cease to apply and the zoning map will be automatically updated with the zoning district that implements the underlying Comprehensive Plan map designation.

#### **4.9.800 Effective Date and Notice of Approved Annexation.**

A. The effective date of an approved annexation must be set in accordance with ORS 222.040 or 222.180.

B. Notice of Approved Annexation.

1. Not later than 10 working days after the passage of an ordinance approving an annexation, the Planning Director will:

- a. Send by certified mail a notice to public utilities (as defined in ORS 757.005), electric cooperatives and telecommunications carriers (as defined in ORS 133.721) operating within the City.
- b. Mail a notice of the annexation to the Secretary of State, Department of Revenue, Deschutes County Clerk, Deschutes County Assessor, affected districts, and owners and electors in the annexed territory.

The notice must include:

- i. A copy of the ordinance approving the annexation;
  - ii. A legal description and map of the annexed territory;
  - iii. The findings; and
  - iv. Each site address to be annexed as recorded on Deschutes County assessment and taxation rolls.
- c. The notice to the Secretary of State will also include a copy of the statement of consent as required in BDC 4.9.400, Initiation Procedures.
2. If the effective date of an annexation is more than one year after the City Council passes the ordinance approving it, the Planning Director will mail a notice of the annexation to the Deschutes County Clerk not sooner than 120 days and not later than 90 days prior to the effective date of the annexation.

#### **4.9.900 Extraterritorial Extension and/or Connection of Water and Sewer Service.**

The City Council may approve an extraterritorial extension and/or connection of water and sewer services consistent with the requirements of Goal 11 Public Facilities and OAR 660-011-0060 and 660-011-0065 and may require an annexation contract. The review is a Type III process in accordance with BDC Chapter 4.1, Development Review and Procedures with the City Council as the sole review authority.



**EXHIBIT B  
FINDINGS OF FACT  
BEND DEVELOPMENT CODE (BDC) UPDATE  
AMENDMENT PZ 16-0692**

**Procedural Findings**

Notice of the proposed amendments was provided to the Department of Land Conservation and Development (DLCD) on October 4, 2017. A notice of the November 13, 2017, Planning Commission public hearing and of the December 6, 2017, City Council public hearing was printed in the Bend Bulletin on October 22, 2017.

On October 23, 2017, the Planning Commission held a work session and discussed the proposed amendments and on November 13, 2017, the Planning Commission held a public hearing and recommended approval to the City Council of the proposed text amendments. On December 6, 2017, the City Council held a public hearing and conducted the first reading including an amendment to the approval criteria for the removal of irrigation district water rights; however, on December 20, 2017, the motion for a second reading failed after further discussion by the Council. The Council then discussed and conducted a new first reading with a revision to the approval criteria for irrigation district water rights and on January 3, 2018, the Council held a second reading and voted to adopt the amendments.

**Criteria of Approval**

- (1) The Bend Comprehensive Plan
- (2) Bend Development Code
  - (a) Chapter 4.6, Land Use District Map and Text Amendments;  
Section 4.6.200(B), Criteria for Legislative Amendments

**Applicable Procedures**

- (1) Bend Development Code
  - (a) Chapter 4.1, Land Use Review and Procedures

**Findings Regarding Compliance with Applicable Criteria:**

**CONFORMANCE WITH CITY OF BEND DEVELOPMENT CODE, CHAPTER 4.6,  
LAND USE DISTRICT MAP AND TEXT APMENTS**

**4.6.200 Legislative Amendments.**

**A. Applicability, Procedure and Authority.** Legislative amendments generally involve broad public policy decisions that apply to other than an individual property owner. These include, without limitation, amendments to the text of the comprehensive plan and map, Development Code and changes in the zoning map not directed at a small number of properties. They are reviewed using the Type IV procedure in accordance with Chapter 4.1, Land Use Review and Procedures and shall conform to Section 4.6.600, Transportation Planning Rule Compliance. A Legislative Amendment may be approved or denied.

**FINDING:** The recommended amendments to the text of the BDC involve broad public policy rather than application to an individual property owner. Therefore, the Legislative Amendment Procedures of this section are the appropriate procedures for this review.

**B. Criteria for Legislative Amendments.** The applicant shall submit a written narrative which explains how the approval criteria will be met. A recommendation or a decision to approve or to deny an application for a Legislative Amendment shall be based on all of the following criteria:

**1. The request is consistent with the applicable State land use law;**

**FINDING:** The proposed amendments are consistent with the applicable State land use law. In particular, they satisfy Goal 1: Citizen Involvement, Goal 2: Land Use Planning, Goal 8: Recreational Needs, Goal 9: Economic Development, Goal 10: Housing, Goal 11: Public Facilities and Services, Goal 12: Transportation, and Goal 14: Urbanization.

**Goal 1, Citizen Involvement,** is satisfied by following the City's acknowledged text amendment process that includes a Planning Commission public hearing, followed by a City Council public hearing.

On October 3, 2017, staff emailed the proposed code update to the Development Code Update Group. The group includes community members comprised of architects, lawyers, developers, engineers, a representative from COBA, representatives from Central Oregon LandWatch, and a land use planner. Staff received comments from the Bend-La Pine School District, Brooks Resources, Central Oregon LandWatch and Al Johnson. Staff also emailed the draft to the irrigation districts on October 3, 2017, and met with them on October 19, 2017 to discuss the proposed amendments. Following the meeting, staff received a letter on October 20, 2017 from Steve Shropshire on behalf of the Deschutes Basin Board of Control (DBBC). The DBBC is an intergovernmental entity comprised of eight Irrigation Districts including Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts. On October 30, 2017, staff met with Mr. Shropshire and Matt Singer, from Holland & Knight and attorney for COID, to discuss the letter and possible amendments. On October 11, 2017, staff met with the Bend Parks and Recreation District to discuss the proposed amendments. Staff also held an informational open house on October 12, 2017 to

review and discuss the proposed amendments. On October 24, 2017, staff met with Central Oregon LandWatch to discuss the letter they submitted. Additional letters were submitted prior to the Planning Commission and City Council public hearing from Bend Parks and Recreation District, Bend-La Pine School District, Central Oregon Landwatch, Jody Ward, Southeast 'Elbow' Property Owners, and Swalley Irrigation District.

On October 23, 2017, the Planning Commission held a work session and discussed the proposed amendments and held a public hearing on November 13, 2017. During the hearing, Christen Brown submitted a letter into the record. The Planning Commission recommended approval to the City Council of the proposed text amendments and asked staff to continue to work with interested stakeholders on irrigation district water rights. Staff met with Mr. Shropshire and Mr. Singer on November 17, 2017, and with Laura Craska Cooper and Jody Ward on November 20, 2017, to discuss the approval criteria regarding irrigation district water rights.

On December 6, 2017, the City Council held a public hearing and conducted the first reading including an amendment to the approval criteria for the removal of irrigation district water rights; however, on December 20, 2017, the motion for a second reading failed after further discussion by the Council. The Council then discussed and conducted a new first reading with a revision to the approval criteria for irrigation district water rights and on January 3, 2018, the Council held a second reading and voted to adopt the amendments.

Therefore, Goal 1 has been met.

**Goal 2, Land Use Planning**, requires a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions. The Goal is met because the City followed the land use planning process and policy framework established in the City's acknowledged Comprehensive Plan and BDC as a basis for the decisions and actions related to the new regulations regarding the use of land and to assure an adequate factual base for these decisions and actions. The proposed amendments will be adopted by the City Council after a public hearing. Multiple opportunities were provided for review and comment by citizens and affected governmental units during the preparation of this ordinance.

Goal 2 specifically states that minor plan changes should be based on special studies or other information, which will serve as the factual basis to support the change. The public need and justification for the particular change should be established. On November 14, 2016, DLCDC approved the UGB expansion of 2,380 acres for the City of Bend, and on December 6, 2016, the amended Bend Comprehensive Plan and map designations went into effect. The UGB expansion plan designations provides the following acreages consistent with the overall land needs for housing, employment, and parks and schools:

- 1,142 gross acres of residential land (including land for future schools and future parks not yet in the Bend Parks and Recreation District [BPRD] or school district ownership);
- 815 gross acres of employment land;
- 285 acres of land for public facilities currently in BPRD or school district ownership; and,
- 138 acres of existing right-of-way within and fronting UGB expansion areas, needed to provide urban street improvements to support growth in the expansion areas.

On June 21, 2017, the City adopted the UA District to protect the plan designations and policy intent of the Bend Comprehensive Plan in the expansion areas until properties are annexed into city limits. Additional planning steps are still required before the properties in the UA will be available and ready for urban development, including but not limited to, area planning and/or master planning, annexation, and infrastructure improvements. There is a public need and benefit of creating BDC Chapter 4.9, Annexations because it provides the process to bring land in the UA into the City limits in an orderly and efficient way and in compliance with the new Bend Comprehensive Plan designations and policies.

Therefore, the proposed amendments are justified and needed, and compliance with Goal 2 is maintained.

**Goal 3, Agricultural Lands, Goal 4, Forest Lands, and Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces.** Goals 3 and 4 are not applicable because no lands are designated as either agricultural or forest lands in the urbanizable area. Goal 5 is not applicable because these amendments do not affect any regulation that implements Goal 5 and the City's acknowledged regulations implementing Goal 5 remain in effect with no change in applicability.

**Goal 6, Air, Water and Land Resources Quality** is not applicable because the City's acknowledged regulations implementing Goal 6 remain in effect with no change in applicability.

**Goal 7, Areas Subject to Natural Hazards** is not applicable because the City's acknowledged regulations implementing Goal 7 remain in effect with no change in applicability.

**Goal 8, Recreational Needs** requires the City to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts. The Bend Comprehensive Plan includes the following Annexation Policy:

***11-43 Requests for annexation must demonstrate how the annexed land is capable of being served by urban services for sanitary sewer collection, domestic water, transportation, schools and parks,***

***consistent with applicable district facility plans and the City's adopted public facility plans."***

The BDC Chapter 4.9, Annexations requires a letter or other written documentation from the Bend Park and Recreation District, which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails. The amendments also require that the owner of the annexed territory submit an executed consent to annex to the Park District, unless the territory is already located within the District.

The approval criteria requires the applicant to demonstrate how the annexed territory is capable of being served by public facilities and services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, transportation, schools, and parks, consistent with the City's adopted public facility plans, transportation system plan, and applicable district plans, either as provided in an applicable area or master plan or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner.

Therefore, compliance with Goal 8 is maintained.

**Goal 9, Economic Development**, is implemented through Oregon Administrative Rule (OAR) Division 9, which is intended to ensure that each jurisdiction maintain an adequate land supply for economic development and employment growth. A Planning Guideline states, "Plans should designate the type and level of public facilities and services appropriate to support the degree of economic development being proposed."

The acknowledged UGB expansion ensures an adequate supply of land for economic opportunities in Bend by providing needed types and amounts of employment lands in suitable locations as required by Goal 9, and documented in the Economic Opportunity Analysis and Urbanization Report (Appendices E and L to the Bend Comprehensive Plan). When employment land is part of an annexation application, the applicant will have to show how the land is capable of being served by public facilities and services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, and transportation, or how impacts will be adequately mitigated through an annexation agreement or other funding mechanism. Therefore, compliance with Goal 9 is maintained.

**Goal 10, Housing**, requires provisions to provide for the housing needs of citizens of the state. The acknowledged UGB expansion areas provide the land needed for future population growth and has been plan designated so that housing is developed to help achieve the City's needed mix of 55% single family detached, 10% single family attached, and 35% multi-family housing. Bend Development Code Chapter 4.9, Annexations requires development in the expansion areas to comply with the applicable Bend Comprehensive Plan Specific Expansion Area Policies, which ensure that the total number and mix of housing units assumed for each UGB expansion area will be

achieved. In addition, expansion areas that include residentially designated land within master plans must meet higher minimum density standards than established for the residential plan designations generally and must provide for a variety of housing types. Compliance with these policies will be implemented through area planning and/or master planning approval and binding annexation agreements that will control subsequent development approvals. Therefore, compliance with Goal 10 is maintained.

**Goal 11, Public Facilities and Services**, requires the City to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. The City's Public Facility Plans (PFP) for water, sewer collection, transportation, and stormwater are all adopted and acknowledged. The city is updating these PFPs in the coming years to reflect the newly expanded UGB. The expansion areas are zoned UA District which serves as a holding zone to maintain the urbanizable areas potential for future urban development until appropriate urban facilities and services are planned or available and annexation to the City of Bend can occur. The proposed BDC Chapter 4.9, Annexations includes the following approval criteria to ensure that properties that are annexed into the City have the appropriate urban facilities and services:

3. The proposal demonstrates how the annexed territory is capable of being served by public facilities and services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, transportation, schools, and parks, consistent with the City's adopted public facility plans, transportation system plan, and applicable district plans, either as provided in an applicable Area or Master Plan or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner.
4. The proposal demonstrates how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis for analysis and mitigation of transportation impacts.

Based on the forgoing, the City finds that the proposal satisfies Goal 11.

**Goal 12, Transportation**, requires the City to provide and encourage a safe and convenient and economic transportation system. The Goal 14 Administrative Rule (OAR 660-24-0020(1)(d)) recognizes that:

*The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as*

*urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary.*

OAR 660-024-0020(1) allows cities to defer addressing the requirements of OAR 660-12-0060 of the TPR (which requires a demonstration that there are adequate planned transportation facilities to serve the planned development) until property added to a UGB is re-designated or rezoned to allow urban development. As part of the UGB acknowledgement, the City Council chose to defer addressing the requirements of OAR 660-12-0060 of the TPR for the urbanizable areas by retaining the existing Deschutes County rural zoning and that the transportation planning and TPR compliance would be accomplished with annexation along with master or area planning.

On June 21, 2017, the City Council adopted the UA District and on July 21, 2017, Deschutes County rezoned the expansion area properties to the UA District. Since the UA District further limits rural uses and does not generate more vehicle trips than development that was allowed under Deschutes County rural zoning, the transportation planning and TPR compliance would still be accomplished with annexation along with master or area planning.

The following amendment to BDC 4.6.600, Transportation Planning Rule Compliance and the new approval criteria in BDC Chapter 4.9, Annexations requires an applicant to address the requirements of OAR 660-12-0060 of the TPR as part of their annexation application:

*4.6.600 Transportation Planning Rule Compliance.*

*When a development application includes a proposed Comprehensive Plan amendment or ~~land use district change, or both annexation~~, the proposal shall must be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.*

*4.9.600 Approval Criteria.*

*A. The City Council may approve, or approve with conditions, the proposed annexation application if all of the following criteria are met:*

*7. The proposal demonstrates that approval of the annexation and zoning districts that implement the underlying Bend Comprehensive Plan map designations is consistent with the provisions of BDC 4.6.600, Transportation Planning Rule Compliance.*

Therefore, the transportation planning and TPR compliance will be accomplished with annexation and compliance with Goal 12 is maintained.

**Goal 13, Energy Conservation** is not applicable because the City's acknowledged regulations implementing Goal 13 remain in effect with no change in applicability

**Goal 14, Urbanization**, requires the City to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

On November 14, 2016, DLCD approved the UGB expansion of 2,380 acres for the City of Bend, and on December 6, 2016, the amended Bend Comprehensive Plan and map designations went into effect. Nearly all expansion areas will include a mix of housing, employment areas, shopping/services, and schools and parks. The new policies for the UGB expansion areas are intended to:

- Ensure housing mix and numbers are met (consistent with the capacity assumptions).
- Provide flexibility to adjust the plan designations spatially, if needed.
- Identify conceptual plans for key streets, trails, and other transportation facilities.
- Identify how needed parks and schools will be provided and conceptually where they will be located.
- Address how infrastructure funding will be accomplished.

On June 21, 2017, the City adopted the UA District to protect the policy intent of the Bend Comprehensive Plan in the expansion areas until properties are annexed into the city limits. Additional planning steps are still required before the properties in the UA will be available and ready for urban development, including but not limited to, area planning and/or master planning, annexation, and infrastructure improvements.

Bend Development Code Chapter 4.9, Annexations will ensure consistency with the Bend Comprehensive Plan designations and policies through annexation agreements and area and/or master plans.

Therefore, the City's long standing acknowledgment of compliance with Goal 14 is maintained.

**Goal 15, Willamette River Greenway, Goal 16, Estuarine Resources, Goal 17, Coastal Shorelands, Goal 18, Beaches and Dunes, and Goal 19, Ocean Resources** are not applicable to the proposed Development Code amendment.

Based on the above discussion, the proposed text amendments to the Development Code are consistent with the statewide planning goals and therefore comply with the requirement that the amendment be consistent with state land use planning law.

**ORS Chapter 222 —City Boundary Changes; Mergers; Consolidations;**



## Withdrawals

ORS 222 provides the statutory framework, notice requirements and procedures for annexation. Bend Development Code Chapter 4.9, Annexations includes options for property owners and electors to initiate an annexation without an election and it establishes procedures and criteria for approving an annexation under the provisions of the ORS Chapter 222. Consistent with ORS 222.111 the BDC Chapter 4.9, Annexations requires the property to be contiguous with the existing City limits when it annexes and consistent with ORS 222.120 the BDC Chapter 4.9, Annexations requires the notice of the hearing to be published in a newspaper of general circulation in the City once each week for two successive weeks prior to the day of hearing, and notices of the hearing to be posted in four public places in the City for a like period. Furthermore, it includes a section addressing the effective date of an approved annexation in accordance with ORS 222.040 or 222.180 and it also includes the requirements for the reporting of the approved annexation.

Therefore, BDC Chapter 4.9, Annexations complies with the requirements of ORS 222.

Because the proposed code amendments are limited in scope, there are no other Administrative Rules applicable to this amendment. Likewise, there are no other applicable Oregon Revised Statutes that are criteria applicable to these amendments (Note, consistency with the Transportation Planning Rule (TPR) is discussed further in this document).

### **2. The request is consistent with the applicable Bend Comprehensive Plan goals and policies;**

**FINDING:** The “goals” established in the Comprehensive Plan express the desires of the residents of Bend as the City progresses into the future. The “goals” are generally carried out through “policies,” which are statements of public policy. The following Goals and Policies are applicable:

#### **Chapter 1: Plan Management and Citizen Involvement**

##### **Goals:**

- **Create and preserve Great Neighborhoods.** Bend has a variety of great neighborhoods that promote a sense of community and are well-designed, safe, walkable, and include local schools and parks. Small neighborhood centers provide local shops, a mix of housing types, and community gathering places. The character of historic neighborhoods is protected and infill development is compatible.
- **Create Housing Options and Affordability.** Bend residents have access to a variety of high quality housing options, including housing affordable to people with a

range of incomes and housing suitable to seniors, families, people with special needs, and others. Housing design is innovative and energy efficient.

- **Fosters a Balanced Transportation System.** Bend's balanced transportation system incorporates an improved, well-connected system of facilities for walking, bicycling, and public transit, while also providing a reliable system for drivers. Bend's transportation system emphasizes safety and convenience for users of all types and ages. Transportation and land use are integrated to foster livability.
- **Build Cost Effective Infrastructure.** Bend plans and builds water, wastewater, storm water, transportation, and green infrastructure in a cost-effective way that supports other project goals. Efficient use of existing infrastructure is a top priority.
- **Create Clear and Consistent Implementing Ordinances.** Implement the plan through effective, clear and consistent ordinances and language that reflect the intent of the vision.

**FINDING:** The acknowledged UGB expansion and Bend Comprehensive Plan policies ensure great neighborhoods, housing options and affordability, and needed infrastructure including a balanced transportation system for the urbanizable area. Bend Development Code Chapter 4.9, Annexations will be the tool to ensure proposed annexations are consistent with the Bend Comprehensive Plan policies and with an approved area and/or master plan. In addition, the annexation chapter will require an applicant to demonstrate how the annexed land is capable of being served by urban services for sanitary sewer collection, domestic water, transportation, schools and parks, consistent with applicable district facility plans and the City's adopted public facility plans as contemplated by the Bend Comprehensive Plan.

### *Policies*

#### *General Policy Guidance*

**1-1** The Goals stated within this Comprehensive Plan are intended to be guiding and aspirational; they are not regulatory policies. The Policies in the Comprehensive Plan are intended to provide standards for the City in adopting land use regulations, and compliance with the implementing regulations shall be deemed in compliance with the Comprehensive Plan.

**FINDING:** Bend Comprehensive Plan Chapter 11, Growth Management includes Annexation Policies 11-41 through 11-50. These Policies provided standards for developing BDC Chapter 4.9, Annexations.

#### *Citizen Involvement*

**1-15.** The city shall continue to use advisory committees in their planning process, members of which are selected by an open process, and who are widely representative of the community.

**1-16.** The city will use other mechanisms, such as, but not limited to, meetings with neighborhood groups, planning commission hearings, design workshops, and public forums, to provide an opportunity for all the citizens of the area to participate in the planning process.

**FINDING:**

On October 3, 2017, staff emailed the proposed code update to the Development Code Update Group. The group includes community members comprised of architects, lawyers, developers, engineers, a representative from COBA, representatives from Central Oregon LandWatch, and a land use planner. Staff received comments from the Bend-La Pine School District, Brooks Resources, Central Oregon LandWatch and Al Johnson. Staff also emailed the draft to the irrigation districts on October 3, 2017, and met with them on October 19, 2017 to discuss the proposed amendments. Following the meeting on October 20, 2017, staff received a letter from Steve Shropshire on behalf of the DBBC. On October 30, 2017, staff met with Mr. Shropshire and Matt Singer, from Holland & Knight and attorney for COID, to discuss the letter. On October 11, 2017, staff met with the Bend Parks and Recreation District to discuss the proposed amendments. On October 12, 2017, staff held an informational open house to review and discuss the proposed amendments. On October 24, 2017, staff met with Central Oregon LandWatch to discuss the letter they submitted. Additional letters were submitted prior to the Planning Commission and City Council public hearing from Bend Parks and Recreation District, Bend-La Pine School District, Central Oregon Landwatch, Jody Ward, Southeast 'Elbow' Property Owners, and Swalley Irrigation District.

A notice of the November 13, 2017, Planning Commission public hearing and of the December 6, 2017, City Council public hearing was printed in the Bend Bulletin on October 22, 2017.

The Planning Commission a held work session on October 23, 2017, and a public hearing on November 13, 2017. The Planning Commission recommended approval to the City Council of the proposed text amendments and also asked staff to continue to work with interested stakeholders on irrigation district water rights. Staff met with Mr. Shropshire and Mr. Singer on November 17, 2017 and with Laura Craska Cooper and Jody Ward on November 20, 2017 to discuss irrigation district water rights.

On December 6, 2017, the City Council held a public hearing and conducted the first reading including an amendment to the approval criteria for the removal of irrigation district water rights; however, on December 20, 2017, the motion for a second reading failed after further discussion by the Council. The Council then discussed and conducted a new first reading with a revision to the approval criteria for irrigation district water rights and on January 3, 2018, the Council held a second reading and voted to adopt the amendments.

Therefore, compliance with Chapter 1 has been met.

### **Chapter 3: Community Connections**

#### **Goal:**

- To coordinate the development of future park and school sites to serve the expanding urban area population.

#### **POLICIES**

##### **Parks and Recreation Facilities**

**3-8** The City shall refer to the park district, for its review and recommendations, all development proposals that include or are adjacent to existing or proposed parks or trails.

##### **Schools**

**3-12** The City will plan for safe streets, pedestrian, and bike facilities adjacent to the school sites as new schools are erected.

**3-13** The City will coordinate with the Bend La-Pine School District to increase pedestrian and bicycle accessibility to schools.

**3-14** When legally allowed, the City may require major new developments to reserve land for school purposes in conjunction with the Bend-La Pine School District's adopted plan for the type and location of future facilities.

Bend Development Code Chapter 4.9, Annexations requires the applicant to submit documentation from the Bend Park and Recreation District, which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails. In addition, the applicant must also submit documentation from the Bend-La Pine School District, which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review and comment on the proposed annexation.

If a public elementary school on lots or parcels smaller than 20 acres proposes to annex without preparing an area plan or master plan, they will have to prepare an analysis of walking, biking and transit facilities to destinations within the UGB for a distance of one mile from the boundary of the school site along and across arterial and collector roadways to accommodate safe, accessible and convenient access to and from the school. Based on the analysis, the City may require, through an annexation agreement or other binding mechanism, improvements to ensure safe and accessible paths of travel to and from the school, which may include walking, biking, provision of transit stops and/ accessibility improvements, including compliant curb ramps along the access routes.

Therefore, compliance with Chapter 3 has been met.

## **Chapter 5: Housing and Residential Lands**

### **Goals:**

- Keep our neighborhoods livable by offering a variety of living styles and choices, creating attractive neighborhoods located close to schools, parks, shopping and employment.
- Accommodate the varied housing needs of citizens with particular concern for safety, affordability, open space, and a sense of community.
- Recognize the importance of transportation linkages (streets, bikeways, side-walks and paths) in connecting neighborhoods and building and maintaining a sense of community.
- Promote more flexibility in development standards to balance the need for more efficient use of residential land and preservation of natural features.
- Zone adequate land in specific designations to allow for production of needed housing units.

### *Housing Mix, Density, and Affordability*

**5-4.** The City will apply plan designations, zoning districts and development code regulations to implement the mix of housing indicated in the adopted Housing Needs Analysis.

**FINDING:** The net buildable residential land in the urbanizable area is 646 acres. These areas need to prepare an area plan and/or master plan prior to or concurrently with annexation. The Bend Comprehensive Plan Specific Expansion Area Policies along with area and/or master planning require these residential lands to meet higher minimum density standards than established for the residential plan designations generally and to provide for a variety of housing types. BDC Chapter 4.9, Annexations requires the annexation proposal to be consistent with the Bend Comprehensive Plan policies and with an approved area plan and/or master plan. Therefore, the mix of housing indicated in the adopted Housing Needs Analysis will be implemented.

### **Transportation connectivity**

**5-38** Medium-and high-density residential developments should have good access to transit, K-12 public schools where possible, commercial services, employment and public open space to provide the maximum access to the highest concentrations of population.

**FINDING:** The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis to analyze and mitigate transportation impacts related to an annexation proposal. This will ensure orderly constructions of the Bend Urban Area Transportation System Plan network of streets and walking, biking, and transit facilities.

**5-43** The City will coordinate with the school and parks districts to ensure that the respective plans of each local government are coordinated and consistent with state law.

**FINDING:** Bend Development Code Chapter 4.9, Annexations requires the applicant to submit documentation from the Bend Park and Recreation District, which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails. In addition, the applicant must submit a completed and signed Bend Park and Recreation District Annexation Agreement, unless the property is already included in the District.

The applicant must also submit documentation from the Bend-La Pine School District, which indicates that the applicant has met with the District to discuss the proposed annexation and provided the District an opportunity to review and comment on the proposed annexation.

#### *Public Utilities and Services*

**5-52.** All residential areas will be provided with community water and sewer services and other facilities necessary for safe, healthful, convenient urban living consistent with the density of development.

**FINDING:** When properties prepare a master plan or area plan and propose to annex into City limits, they must demonstrate how the annexed land is capable of being served by urban services for sanitary sewer collection, domestic water, transportation, schools and parks, consistent with applicable district facility plans and the City's adopted public facility plans.

Therefore, the proposed amendments satisfy Chapter 5 since BDC Chapter 4.9, Annexations will require the needed density and housing mix, transportation connectivity, and public utilities and services when a property annexes into the City limits.

## **Chapter 6: The Economy and Lands for Economic Growth Goals**

- Promote a vital, diverse and sustainable economy, while enhancing the community's overall livability.

#### *Policies*

### *General Policies*

**6-4** Infrastructure will be planned, designed, and constructed to support continued economic growth and orderly development.

**FINDING:** Requests for annexation must demonstrate how the annexed territory is capable of being served by public facilities and services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, transportation, schools, and parks or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner. The proposal must also demonstrate how public facility and service impacts, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation.

Therefore, infrastructure will be planned, designed, and constructed in the areas proposed for annexation to support continued economic growth and orderly development and compliance with Goal 6 has been met.

## **Chapter 7: Transportation Systems**

### **Plan Goals**

#### **Mobility and Balance:**

- Develop a transportation system that serves all modes of travel and reduces the reliance on the automobile.

#### **Efficiency:**

- Encourage the development of land use patterns that provide efficient, compact use of land, and facilitate a reduced number and length of trips.

### *Transportation System Plan Objectives and Policies*

#### *Transportation and Land Use*

#### *Objectives:*

- To ensure that future development, including re-development, will not interfere with the completion of Bend's transportation system

**FINDING:** Requests for annexation must demonstrate how the annexed land is capable of being served by urban services for sanitary sewer collection, domestic water, transportation, schools and parks, consistent with applicable district facility plans and the City's adopted public facility plans. The proposal must also demonstrate how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing

infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis for analysis and mitigation of transportation impacts.

### ***Pedestrian and Bicycle Systems***

#### ***Objectives:***

- To support and encourage increased levels of bicycling and walking as an alternative to the automobile
- To provide safe, accessible and convenient bicycling and walking facilities

#### ***Policies:***

**7-28** The City shall work together with the Park District to acquire, develop and maintain the *primary* trails designated on the *Bend Urban Area - Bicycle and Pedestrian System Plan; Figure 7-2*. New development shall be required to construct and dedicate Primary Trails for public use according to this plan. The alignments depicted are general in nature and shall be located according to criteria defined in TSP Section 6.3.1.3. These trails, and future trail additions, shall support the need for non-motorized travel in the community. *Street System*

**FINDING:** The submittal requirements for BDC Chapter 4.9, Annexations requires the applicant to submit documentation from the Bend Park and Recreation District which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails.

### **Street System**

#### ***Objectives:***

- To provide a practical and convenient means of moving people and goods within the urban area that accommodates various transportation modes
- To provide a safe and efficient means to access all parts of the community
- To provide an attractive, tree-lined, pedestrian friendly streetscape sensitive to protecting the livability of the community

#### ***General Policies:***

**7-50** Streets shall be classified and generally located according to the Bend Urban Area - Roadway System Plan (Figure 7-1), and the Street Functional Classification (Table 7-1). Transportation project development review and approval shall be subject to the provisions of the Bend Development Code.

**FINDING:** Bend Development Code Chapter 4.9, Annexations includes the following approval criteria that would require proposed developments to comply the BDC and Bend Urban Area Transportation Systems Plan as required by Policy 7-28 and 7-50:



#### **4.9.600 Approval Criteria.**

A. The City Council may approve, or approve with conditions, the proposed annexation application if all of the following criteria are met:

3. The proposal demonstrates how the annexed territory is capable of being served by public facilities and services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, transportation, schools, and parks, consistent with the City's adopted public facility plans, transportation system plan, and applicable district plans, either as provided in an applicable Area or Master Plan or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner.
4. The proposal demonstrates how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis for analysis and mitigation of transportation impacts.

Therefore, compliance with Chapter 7 has been met.

#### **Chapter 8: Public Facilities and Services**

##### **Goals**

Adequate public facilities are the key to efficient and stable urban development. The goals below provide general guidance for maintaining and improving the level and quality of urban services as growth occurs in Bend. The citizens and elected officials strive:

- For the city, county, and special districts to coordinate the provision of adequate urban services in an efficient and timely manner to support urban development;
- To ensure that public services will not negatively impacts on the environment or the community; and
- To locate and operate public buildings and other public facilities to best serve the needs of the residents.

##### **Water Facilities and Systems**

**8-17** The City shall continue to coordinate with private providers and irrigation districts in matters of water concerns within the Urban Growth Boundary.

Bend Development Code Chapter 4.9, Annexations is intended to achieve orderly and efficient annexation of land to the City that will result in providing a complete range of public services and public facilities for the annexed territory and to facilitate coordination with other local governments, including irrigation districts, who share jurisdiction over annexed territory.

The Deschutes Basin Board of Control (DBBC) is an intergovernmental entity comprised of eight Irrigation Districts including Arnold, Central Oregon, Lone Pine, North Unit, Ochoco, Swalley, Three Sisters, and Tumalo Irrigation Districts. The DBBC (other than Ochoco and Three Sisters Irrigation Districts) rely on irrigation diversion and delivery facilities located within the City's UGB. In addition, Arnold, Central Oregon, and Swalley Irrigation Districts all make deliveries to lands located inside both the existing city limits and inside the UGB.

Staff emailed the proposed code update creating the annexation chapter to the irrigation districts on October 3, 2017, and met with them on October 19, 2017 to discuss the proposed annexation chapter. Following the meeting on October 20, 2017, staff received a letter from Steve Shropshire on behalf of the DBBC. On October 30, 2017, staff met with Mr. Shropshire and Matt Singer, from Holland & Knight and attorney for COID, to discuss the letter and their proposed amendments to the draft annexation chapter.

On October 23, 2017, the Planning Commission held a work session and discussed the proposed amendments and held a public hearing on November 13, 2017. The Planning Commission recommended approval to the City Council of the proposed text amendments and asked staff to continue to work with interested stakeholders on irrigation district water rights. Staff met with Mr. Shropshire and Mr. Singer on November 17, 2017, and with Laura Craska Cooper and Jody Ward on November 20, 2017, to discuss irrigation district water rights. To help provide additional clarity and flexibility for when water rights have to be transferred from the property, staff proposed the following revisions (in bold) to the approval criteria during the City Council's public hearing on December 6, 2017:

#### **4.9.600 Approval Criteria.**

**5. Owner(s) have committed to transfer all irrigation district water rights from the property, unless exempted in BDC 4.9.600(A)(5)(a)(i). The timing of the transfer of irrigation district water rights may be worked out between the owner(s) and the irrigation district, but in any event, the transfer must occur prior to the platting of any phase of a land division or prior to certification of final occupancy for developments subject to Site Plan Review, whichever occurs first. For phased subdivisions or developments, however, the transfer may occur by individual phase prior to the platting of each phase or prior to certification of final occupancy of the development on each phase.**

a. Exemption.

- i. In limited instances where the City Council finds that continued use of irrigation district water rights will not conflict with the Bend Comprehensive Plan Specific Expansion Area Policies for the land to be annexed and the transition to urban land uses, an Owner may continue to use the irrigation district water rights until certain events occur or certain conditions are met as set forth in a written agreement. Council may consider additional factors such as efficiency of use, size of the lot or parcel, environmental demands and sustainability, protection of public health, and cost to the city.

The Council was supportive of the proposed changes to the approval criteria; however, following public testimony the Council further discussed the approval criteria and how the transition to domestic water could in some circumstances increase costs to public entities such as schools and parks funded by taxpayers. Based on that concern, the Council conducted the first reading approving the proposed code update with the following additional amendment (in bold):

**4.9.600 Approval Criteria.**

5. Owner(s) have committed to transfer all irrigation district water rights from the property, unless exempted in BDC 4.9.600(A)(5)(a)(i). The timing of the transfer of irrigation district water rights may be worked out between the owner(s) and the irrigation district, but in any event, the transfer must occur prior to the platting of a land division or prior to certification of final occupancy for developments subject to Site Plan Review, whichever occurs first. For phased subdivisions or developments, however, the transfer may occur by individual phase prior to the platting of each phase or prior to certification of final occupancy of the development on each phase.

a. Exemption.

- i. In limited instances where the City Council finds that continued use of irrigation district water rights will not conflict with the Bend Comprehensive Plan Specific Expansion Area Policies for the land to be annexed and the transition to urban land uses, an Owner may continue to use the irrigation district water rights until certain events occur or certain conditions are met as set forth in a written agreement. Council may consider additional factors such as efficiency of use, size of the lot or parcel, environmental demands and sustainability, protection of public health, and cost to the city **and other public entities.**

On December 20, 2017, the motion for a second reading failed after further discussion by the City Council, because a majority found that the exemption language in 5.a.i.,

above, did not sufficiently reflect the City's policy goal of minimizing the use of irrigation water in annexed areas except in extremely limited circumstances. The Council then discussed and conducted a new first reading with the following revision (in bold) to the approval criteria to confirm and clarify the intent that (1) irrigation water rights should normally be transferred as set forth in the code, consistent with the urbanization of the land, and (2) any limited exemption is only at Council's discretion, with the burden on the property owner requesting the exemption to demonstrate that the continued use of irrigation water is consistent with the Comprehensive Plan Policies, and meets one or more of the listed discretionary criteria in the amended language below.

**4.9.600 Approval Criteria.**

5. Owner(s) have committed to transfer all irrigation district water rights from the property, unless exempted in BDC 4.9.600(A)(5)(a)(i). The timing of the transfer of irrigation district water rights may be worked out between the owner(s) and the irrigation district, but in any event, the transfer must occur prior to the platting of a land division or prior to certification of final occupancy for developments subject to Site Plan Review, whichever occurs first. For phased subdivisions or developments, however, the transfer may occur by individual phase prior to the platting of each phase or prior to certification of final occupancy of the development on each phase.

a. Exemption.

i. In limited instances where the City Council finds that continued use of irrigation district water rights will not conflict with the Bend Comprehensive Plan Specific Expansion Area Policies for the land to be annexed and the transition to urban land uses, an Owner may continue to use the irrigation district water rights until certain events occur or certain conditions are met as set forth in a written agreement. **Council may also consider, in its discretion, whether the property owner has satisfactorily shown that continued use of irrigation water would be more efficient based on the size of the lot or parcel, lack of environmental harm and sustainable use of water, protection of public health, or cost to the city or other public entities.**

Bend Development Code Chapter 4.9, Annexations also includes an approval criteria that requires sufficient evidence acceptable to the City to be provided demonstrating that the Irrigation District had an opportunity to review the layout and design for any impacts on irrigation district conveyance facilities and to recommend reasonable protections for such facilities consistent with the irrigation district's adopted rules and regulations, System Improvement Plans and/or development policies.

The submittal requirements in BDC Chapter 4.9, Annexations require territories with irrigation district water rights or other irrigation district facilities to submit the following with an annexation application:

**4.9.500 Submittal Requirements.**

9. Territories with irrigation district water rights or other irrigation district facilities must include the following:

- a. A map of all appurtenant water rights.
- b. A surveyed map of any district facility (e.g., canal, head gate, and crossing) that clearly identifies easements, right-of-ways, access roads, etc. for any conveyance facilities that may remain that are either irrigation district owned or privately owned on the property upon annexation.
- c. A signed statement by the applicant, including any letters or other written documentation provided by the irrigation district, confirming that the applicant has met with the irrigation district to discuss the proposed annexation and the extent to which any issues identified in 4.9.600(A)(6) have been resolved or if they have not yet been resolved, setting forth a plan with a timeline to resolve any issues.

Therefore, the City is in compliance with Bend Comprehensive Plan Police 8-17 since the City coordinated with the irrigations districts on the drafting of the annexation chapter and the annexation chapter provides submittal requirements and approval criteria that requires coordination with the irrigation districts.

**Storm Drainage Facilities and Systems**

**8-26** The ability to provide stormwater facilities for developments proposed for annexation into the City shall be a consideration for annexation approval.

**General Policies**

**8-47** The City may consider funding mechanisms and agreements to address on-site and off-site improvements, modernization of existing infrastructure to City's standards and specifications, and impacts to infrastructure inside the current City limits.

**FINDING:** Requests for annexation must demonstrate how the annexed land is capable of being served by urban services for sanitary sewer collection, domestic water, transportation, schools and parks, consistent with applicable district facility plans and the City's adopted public facility plans. The proposal must also demonstrate how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an

annexation agreement or other funding mechanism approved by the City Council prior to annexation.

Therefore, compliance with Chapter 8 has been met

## **Chapter 11: Growth Management**

### **Goals**

The following goal statements describe the future urban form and growth aspirations of the community and serve as the foundation for policy statements in this chapter. The citizens and elected officials of Bend wish to:

- Create new walkable, mixed use and complete communities by leveraging and complementing land use patterns inside the existing boundary and using expansion to create more complete communities;
- Plan Bend's infrastructure investments for the long term;
- Meet state requirements for growth management and the UGB while achieving local goals;
- Implement an overall strategy to *"Wisely grow up and out"*.

**FINDING:** The purpose of BDC Chapter 4.9, Annexations is to establish procedures and criteria for annexation under the provisions of the Oregon Revised Statutes including, but not limited to, ORS Chapter 222. This chapter is intended to achieve orderly and efficient annexation of land to the City that will result in providing a complete range of public services and public facilities for the annexed territory and to ensure consistency with the Bend Comprehensive Plan.

### **General Area Planning Policies**

**11-23** The City may require Area Plans prior to development in UGB expansion areas.

**FINDING:** Prior to or concurrently with annexation, the applicant must have an approved area plan and/or master plan, unless exempted from area or master planning.

**11-26** Area Plans for land within UGB expansion areas shall comply with the policies of this chapter. There is flexibility to refine the spatial arrangement of plan map designations provided that identified land and housing needs are still met. Where specific expansion area policies identify acreages of specific plan designations or general categories of plan designations (e.g. commercial) are identified, compliance is defined as providing the required acreages of gross buildable land to the nearest acre. Where expansion area policies identify a required minimum housing capacity and mix, compliance is defined as providing no less than the required number of units and providing the housing mix specified to the nearest percentage point (e.g. 37%).

**FINDING:** Prior to or concurrently with annexation, the applicant must have an approved area plan and/or master plan. The BDC Chapter 4.9, Annexations approval

criteria requires compliance with an approved area plan and/or master plan and with the Bend Comprehensive Plan policies including the Specific Expansion Area Policies, which will ensure that identified land and housing needs and mixes are met.

**11-28** Some UGB expansion areas have identified preliminary needs for schools and parks. The need and location for schools and parks is determined by the facility planning of the School District and Park District. The School Attendance Areas and Park Service Areas may change and the Area Plans for the UGB expansion areas should take into account any updated school and park needs when the plan is prepared.

**FINDING:** BDC Chapter 4.9, Annexations requires the applicant to submit documentation from the Bend Park and Recreation District, which indicates that the applicant has met with the District to discuss the proposed annexation, and provided the District an opportunity to review the annexation area for options to enhance existing parks and trails, and develop new parks and trails. In addition, the applicant must submit a completed and signed Bend Park and Recreation District Annexation Agreement, unless the property is already included in the District.

The applicant must also submit documentation from the Bend-La Pine School District that indicates that the applicant has met with the District to discuss the proposed annexation and provided the District an opportunity to review and comment on the proposed annexation.

### **Master Planning Policies**

**11-30** Master plans in expansion areas are subject to policies 11-56 to 11-131 of this chapter.

**FINDING:** Bend Development Code Chapter 4.9, Annexations requires an area plan and/or master plan to be prepared in the expansion areas prior to or concurrently with annexation unless exempted from area or master planning. It also requires the area plan and/or master plan to be in compliance with the Specific Expansion Area Policies 11-56 to 11-131.

**11-34** Where a specific expansion area policy specifies a required overall housing mix for a given area, the total housing mix specified in policy shall apply in addition to the mix by plan designation listed in Table 11-1.

**FINDING:** BDC Chapter 4.9, Annexations requires the annexation application to be consistent with the Bend Comprehensive Plan policies, which include additional housing mixes for different expansion areas. BDC Chapter 4.9, Annexations also requires the annexation proposal to be consistent with an approved area plan and/or master plan, which will ensure consistency with the Specific Expansion Area Policies and Table 11-1.

**11-35** Master plans are required for developments over 20 acres unless otherwise specified in the Development Code. Properties in UGB expansion areas where a master plan is required are shown on Figure 11-4.

**11-37** Approval of a City-initiated Area Plan that encompasses one or more properties over 20 acres (including abutting land in common ownership) does not exempt such properties from master plan requirements.

**FINDING:** Designated expansion areas are required to have area plan and/or master plan approval prior to or concurrently with annexation. Bend Development Code Chapter 4.9, Annexations provides the following three exemptions to this requirement in BDC 4.9.300(B)(1):

- a. Land not subject to an Area Plan or Master Plan as shown in Figure 4.9.300, Expansion Areas.
- b. Public elementary schools on lots or parcels smaller than 20 acres. Notwithstanding, BDC 3.4.400(A), an interim septic system may be installed if approved by the Department of Environmental Quality and the School District agrees to connect to the sewer system when it becomes available. Applicant must submit the following in addition to the requirements of BDC Chapter 4.7, Transportation Analysis:
  - i. An analysis of walking, biking and transit facilities to destinations within the UGB for a distance of one mile from the boundary of the school site along and across arterial and collector roadways to accommodate safe, accessible and convenient access to and from the school. Based on the analysis, the City may require, through an annexation agreement or other binding mechanism, improvements to ensure safe and accessible paths of travel to and from the school, which may include walking, biking, provision of transit stops and/ accessibility improvements, including compliant curb ramps along the access routes.
- c. City initiated annexations of property intended for uses such as publicly owned rights-of-way or City initiated annexation of additional lands brought into the UGB for affordable or market rate housing, in programs such as authorized under Oregon House Bill 4079, or other specified uses as authorized by Oregon statute.

The first exemption is consistent with Policy 11-50 since there are properties within the new UGB but outside city limits on Figure 11-4 that are not required to have an area plan or master plan. The second exemption is for public elementary schools on lots or parcels smaller than 20 acres which is consistent with BDC Chapter 4.5, Master Planning and Development Alternatives which only requires master planning for lots or parcels 20 acres or larger unless it is an institution of higher education. This is also consistent with Community Master Plans in BDC Chapter 4.5, Master Planning and Development Alternative, which exempts newly created lots or parcels smaller than 20 acres from master planning when they intended to be developed for schools. The third



exemption gives the City an exception for uses such as right-of-way or for affordable or market rate housing, in programs such as authorized under Oregon House Bill 4079, or other specified uses as authorized by Oregon statute. Increase affordable housing options is a 2017-2019 City Council goal, which includes an objective to increase the inventory of affordable housing through incentives, removing regulatory barriers, and increasing land supply and funding options. Therefore, the exemptions do not defeat the intent of Policies 11-35 and 11-37.

## **Annexation Policies**

**11-41** Annexations will follow the procedural requirements of state law.

**FINDING:** The purpose of BDC Chapter 4.9, Annexations is to establish procedures and criteria for annexation under the provisions of the Oregon Revised Statutes including, but not limited to, ORS Chapter 222.

**11-42** Annexations will be consistent with the Comprehensive Plan and applicable annexation procedures and approval criteria.

**FINDING:** Bend Development Code Chapter 4.9, Annexations establishes procedures and approval criteria for annexation proposals. An approval criteria for annexation is that the proposal is consistent with the Bend Comprehensive Plan policies and Plan designations applicable to the territory as determined by the Planning Director or designee.

**11-43** Requests for annexation must demonstrate how the annexed land is capable of being served by urban services for sanitary sewer collection, domestic water, transportation, schools and parks, consistent with applicable district facility plans and the City's adopted public facility plans.

### **FINDING:**

Bend Development Code Chapter 4.9, Annexations includes the following approval criteria that would require proposed developments to demonstrate how the annexed land is capable of being served by urban services consistent with applicable district facility plans and the City's adopted public facility plans:

#### 4.9.600 Approval Criteria.

A. The City Council may approve, or approve with conditions, the proposed annexation application if all of the following criteria are met:

3. The proposal demonstrates how the annexed territory is capable of being served by public facilities and services with adequate capacity as determined by the City including sanitary sewer collection, domestic water, transportation, schools, and parks, consistent with the City's adopted

public facility plans, transportation system plan, and applicable district plans, either as provided in an applicable Area or Master Plan or by demonstrating how such public facilities and services will be provided in an orderly, efficient and timely manner.

4. The proposal demonstrates how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis for analysis and mitigation of transportation impacts.

In addition, if the City has not yet amended its public facilities and transportation plans for the affected expansion area, the applicant must initiate an amendment to the relevant plan(s) or provide other evidence that the necessary infrastructure planning under statewide planning Goals 11 and 12 will take place prior to or concurrently with annexation.

**11-44** Annexations will be consistent with an approved Area Plan where applicable. The Area Plan may be reviewed and approved concurrent with an annexation application.

**FINDING:** Bend Development Code Chapter 4.9, Annexations requires area and/or master plan approval prior to or concurrently with annexation for the expansion areas, unless exempted. It also includes approval criteria that requires the annexation proposal to be consistent with an approved area plan and/or master plan.

**11-45** The City may, where appropriate in a specific area, allow annexation and require area planning prior to development approval.

**FINDING:** Expansion areas are required to have area plan and/or master plan approval prior to or concurrently with annexation, unless exempted. Bend Development Code Chapter 4.9, Annexations provides three exemptions to area and/or master planning as part of the annexation application and in its place allows the applicant to submit annexation and development applications concurrently under the anticipated zoning district. Any development approvals will be final decisions for processing purposes but will not be effective until completion of annexation.

**11-46** Land to be annexed must be contiguous to the existing City limits unless the property owners requesting annexation show and the City Council finds that a "cherry-stem" annexation will both satisfy a public need and provide a public benefit.

**FINDING:** Land proposed for annexation must be contiguous to the existing City limits and meet the approval criteria in BDC 4.9.600, Approval Criteria. The code update amends the definition of "contiguous" for purposes of annexation consistent with ORS 222.111. The update also defines "cherry stem annexation" which means the bulk of the annexed property (the cherry) is contiguous to the City by a narrow "stem" which is usually, but not necessarily, a right-of-way.

*Contiguous means that which touches or connects, including that which only connects or touches a common point; the touching together of two or more tracts of land which lie alongside one another or which touch or connect with one another for any length or distance whatsoever, no matter how finite, having a common boundary, including a boundary that only touches a common point. For purposes of annexation, contiguous also means a property or group of adjacent properties, including public right-of-way to be annexed, that touch the city limits at any point along any exterior boundary of the territory to be annexed or that is separated from the city limits only by a public right-of-way or body of water.*

**11-47** Compliance with specific expansion area policies and/or Area Plans will be implemented through master plan approval or binding annexation agreement that will control subsequent development approvals.

**FINDING:** Unless exempted, expansion areas as shown in Comprehensive Plan Figure 11-4 will require area and/or master plan approval prior to or concurrently with annexation. Area and/or master plans must comply with the applicable Bend Comprehensive Plan Specific Expansion Area Policies in Bend Comprehensive Plan Chapter 11, Growth Management. The following approval criteria in BDC Chapter 4.9, Annexations, ensures compliance with the specific expansion area policies and with an approved area or master plan:

**4.9.600 Approval Criteria.**

1. The annexation proposal is consistent with the Bend Comprehensive Plan policies and Plan designations applicable to the territory as determined by the Planning Director or designee.
2. The annexation proposal is consistent with an approved Area Plan and/or Master Plan, unless exempted in BDC 4.9.300(B)(1).

Compliance with the policies and area and/or master plans can be implemented through an annexation agreement according to the proposed definition:

*Annexation agreement means a written agreement between the City and owners of land requesting annexation that states the terms, conditions and obligations of the parties to extend public facilities and public services and mitigate public facility and public service impacts to the City associated with the annexation and future development of the property. The agreement may be used*

to ensure annexation is consistent with the Bend Comprehensive Plan, Area Plans and/or Master Plans.

**11-48** Existing rural infrastructure systems and urban systems (water, sewer, transportation, stormwater) serving annexed areas may be required to be modernized and constructed to the City's standards and specifications, as determined by the City.

**11-49** The City may consider funding mechanisms and agreements to address on- and off-site improvements, modernization of existing infrastructure to the City's standards and specifications, and impacts to infrastructure inside the current City limits.

**FINDING:** An approval criteria for an annexation application requires the applicant to demonstrate how public facility and service impacts, including as applicable: on and off-site improvements, construction and modernization of existing infrastructure (water, sewer, storm water, transportation) to City standards and specifications, and impacts to existing infrastructure inside the City's current city limits, will be adequately mitigated through an annexation agreement or other funding mechanism approved by the City Council prior to annexation. The City will use the standards and criteria of BDC Chapter 4.7, Transportation Analysis for analysis and mitigation of transportation impacts. The proposed code update includes the following definition for annexation agreements:

**Annexation agreement** means a written agreement between the City and owners of land requesting annexation that states the terms, conditions and obligations of the parties to extend public facilities and public services and mitigate public facility and public service impacts to the City associated with the annexation and future development of the property. The agreement may be used to ensure annexation is consistent with the Bend Comprehensive Plan, Area Plans and/or Master Plans.

**11-50** Properties over 20 acres (including adjacent property in common ownership) as of the adoption of the UGB expansion (shown on Figure 11-4) are subject to master plan requirements, regardless of property acreage upon annexation.

**FINDING:** Expansion areas are required to have area and/or master plan approval prior to or concurrently with annexation. The BDC Chapter 4.9, Annexations provides the following three exemptions to this requirement in BDC 4.9.300(B)(1):

- a. Land not subject to an Area Plan or Master Plan as shown in Figure 4.9.300, Expansion Areas.
- b. Public elementary schools on lots or parcels smaller than 20 acres. Notwithstanding, BDC 3.4.400(A), an interim septic system may be installed if approved by the Department of Environmental Quality and the School District agrees to connect to the sewer system when it becomes available. Applicant

must submit the following in addition to the requirements of BDC Chapter 4.7, Transportation Analysis:

- i. An analysis of walking, biking and transit facilities to destinations within the UGB for a distance of one mile from the boundary of the school site along and across arterial and collector roadways to accommodate safe, accessible and convenient access to and from the school. Based on the analysis, the City may require, through an annexation agreement or other binding mechanism, improvements to ensure safe and accessible paths of travel to and from the school, which may include walking, biking, provision of transit stops and/ accessibility improvements, including compliant curb ramps along the access routes.
- c. City initiated annexations of property intended for uses such as publicly owned rights-of-way or City initiated annexation of additional lands brought into the UGB for affordable or market rate housing, in programs such as authorized under Oregon House Bill 4079, or other specified uses as authorized by Oregon statute.

The first exemption is consistent with Policy 11-50 since there are properties within the new UGB but outside city limits on Figure 11-4 that are not required to have an area plan or master plan. The second exemption is for public elementary schools on lots or parcels smaller than 20 acres which is consistent with BDC Chapter 4.5, Master Planning and Development Alternatives which only requires master planning for lots or parcels 20 acres or larger unless it is an institution of higher education. In addition, the Community Master Plan exempts newly created lots or parcels smaller than 20 acres from master planning when they intended to be developed for schools. The third exemption gives the City an exception for uses such as right-of-way or for affordable or market rate housing, in programs such as authorized under Oregon House Bill 4079, or other specified uses as authorized by Oregon statute. Increase affordable housing options is a 2017-2019 City Council goal, which includes an objective to increase the inventory of affordable housing through incentives, removing regulatory barriers, and increasing land supply and funding options. Therefore, the exemptions do not defeat the intent of Policy 11-50.

Therefore, compliance with Chapter 11 has been met.

Based on the findings stated above, staff concludes that the proposed text amendments are consistent with the applicable Bend Comprehensive Plan Goals and Policies.

**3. The applicant can demonstrate a public need or benefit for the proposed amendment.**

**FINDING:** On November 14, 2016, DLCD approved the UGB expansion of 2,380 acres for the City of Bend, and on December 6, 2016, the amended Bend Comprehensive Plan and map designations went into effect for the expansion areas. These plan designations and new Comprehensive Plan policies for the UGB expansion areas set

the framework for implementation of urban zoning and complete communities as part of annexation and area planning and/or master planning. There is a public need and benefit for the citizens of Bend to have an annexation chapter that provides procedures and criteria for orderly boundary expansions consistent with the Bend Comprehensive Plan policies and map designations.

Therefore, the proposed amendments to the BDC meet this criterion.

#### **4.6.500 Record of Amendments.**

**The City Recorder shall maintain a record of amendments to the text of this Code and the land use districts map in a format convenient for public use.**

**FINDING:** In the event the BDC text amendment is adopted by ordinance, the City Recorder will maintain a record of the amendments and the revised provisions will be included as part of the BDC available to the public on the City's website.

#### **4.6.600 Transportation Planning Rule Compliance.**

**When a development application includes a proposed comprehensive plan amendment or land use district change, or both, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.**

**FINDING:** OAR 660-012-0060 requires local governments to maintain consistency between land use regulations and the transportation system plan and demonstrate that planned transportation facilities will be adequate to serve planned land uses. It addresses amendments to land use regulations as well as functional classification systems.

OAR 660-024-0020(1) allows cities to defer addressing the requirements of OAR 660-12-0060 of the TPR (which requires a demonstration that there are adequate planned transportation facilities to serve the planned development) until property added to a UGB is re-designated or rezoned to allow urban development.

*OAR 660-024-0020: Adoption or Amendment of a UGB*

*(1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:*

*\* \* \**

*(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary \* \* \*.*

As part of the UGB acknowledgement, the City Council chose to defer addressing the requirements of OAR 660-12-0060 of the TPR for the urbanizable areas by retaining the existing Deschutes County rural zoning and that the transportation planning and TPR compliance would be accomplished with annexation along with area and/or master planning.

On June 21, 2017, the City Council adopted the UA District and on July 21, 2017, Deschutes County rezoned the expansion area properties to the UA District. Since the UA District further limits rural uses and does not generate more vehicle trips than development that was allowed under Deschutes County rural zoning, the transportation planning and TPR compliance would still be accomplished with annexation along with area and/or master planning.

The following amendment to BDC 4.6.600, Transportation Planning Rule Compliance and the approval criteria in the new BDC Chapter 4.9, Annexation requires an applicant to address the requirements of OAR 660-12-0060 of the TPR as part of their annexation application:

*4.6.600 Transportation Planning Rule Compliance.*

*When a development application includes a proposed Comprehensive Plan amendment or ~~land use district change, or both annexation,~~ the proposal shall must be reviewed to determine whether it significantly affects a transportation facility, in accordance with Oregon Administrative Rule (OAR) 660-012-0060.*

*4.9.600 Approval Criteria.*

*B. The City Council may approve, or approve with conditions, the proposed annexation application if all of the following criteria are met:*

*7. The proposal demonstrates that approval of the annexation and zoning districts that implement the underlying Bend Comprehensive Plan map designations is consistent with the provisions of BDC 4.6.600, Transportation Planning Rule Compliance.*

Therefore, the transportation planning and TPR compliance will be accomplished with annexation along with area or master planning.

**Conclusion:** The proposal is in compliance with this section of the TPR.

**V. CONCLUSIONS:**

Based on the above Findings, the proposed Bend Development Code text amendments meet all applicable criteria for adoption.

