

Draft Development Code Update

October 3, 2017

Prepared by:

Planning Division

Note:

Text in underlined typeface is proposed to be added

Text in ~~striketrough~~ 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

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***)

Area Plan means a plan adopted by the City Council for a specific geographic area, including but not limited to, 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.

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

Comprehensive Plan means the duly adopted Bend Comprehensive Plan including appendices.

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 means a property or group of adjacent properties that touch the city limits at any point along any property's exterior boundary or is separated from the city limits by a public right-of-way or body of water. (Consistent with ORS 222.111)

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

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.

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.

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.

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 there is a recorded land sale contract which is in force, a purchaser under the land sale contract.

Chapter 2.0

LAND USE DISTRICT ADMINISTRATION

2.0.300 Determination of Land Use District Boundaries.

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.

Chapter 3.4
PUBLIC IMPROVEMENT STANDARDS

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.

Chapter 4.1

DEVELOPMENT REVIEW AND PROCEDURES

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.

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>

♦ ♦ ♦ Process to be determined by the City based on factors and circumstances associated with the specific annexation request. See BDC Chapter 4.9, Annexations.

Chapter 4.6

LAND USE DISTRICT MAP AND TEXT AMENDMENTS

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.

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. Property owners requesting a “cherry stem” annexation must demonstrate to the City Council that it will both satisfy a public need and provide a public benefit.

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 factors and circumstances associated with the specific annexation request. 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. 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

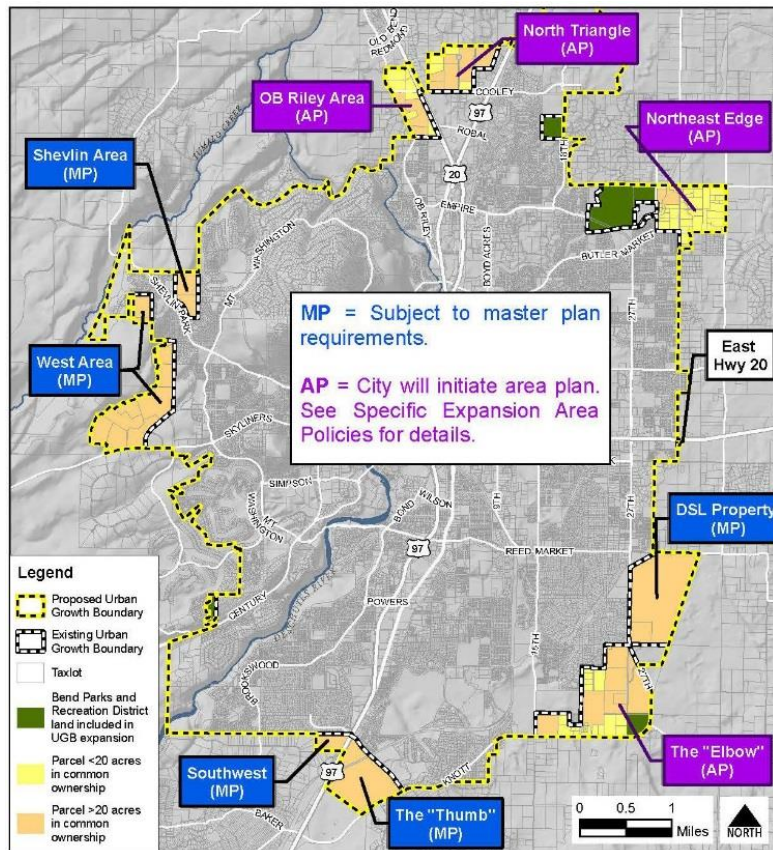


Table 4.9.300 - Specific Expansion Area Policies

<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>DLS 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. Elementary schools on lots or parcels smaller than 20 acres, provided the applicant submits the following in addition to the requirements of BDC Chapter 4.7, Transportation Analysis:
 - i. An analysis of walking, biking and transit facilities 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 for a distance of one mile from the boundary of the school site. 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 service and/ accessibility improvements, including compliant curb ramps along the access routes.
 - c. City initiated annexations for public uses or public benefits, including but not limited to, publicly owned rights-of-way or affordable housing developments.

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. The territory must be identified on the map.
 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 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 the annexation area for compliance with the School Facility Plan, latest edition.
8. Territories with irrigation district water rights must include the following:
 - a. A map of all appurtenant water rights.
 - b. A surveyed map of any district facility (canal, head gate, crossing) that clearly identifies easements, right-of-ways, access roads, etc. for any conveyance facilities that may remain (district owned, or overlying private property owner through easement) on the property upon annexation.
 - c. A letter or other written documentation from the irrigation district which indicates that the applicant has met with the District to discuss the proposed annexation and has resolved or has a proposal or plan with a timeline to resolve any issues identified in 4.9.600(6).
9. 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 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 remove all Irrigation District water rights from property and transfer them to the appropriate irrigation district through a method agreeable to the owner, district and the City. In limited instances where not in conflict with the urbanization of the land to be annexed, an Owner may continue to use the irrigation water for a specified time if agreed to in writing by the City and district. Unless allowed to continue, the timing of the removal of irrigation rights may be worked out between the Owner(s) and the irrigation district, but in any event, removal 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.
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 showing that such facilities will be adequately protected upon future development of the property. Requested protection must be consistent with irrigation district master plans or other established procedures and practices by the irrigation district, and may be reflected in an annexation agreement, or other acceptable planning or contractual process.
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.

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 shall 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 shall 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. 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.