

MEMORANDUM

TO: Oregon City Planning Commission
FROM: Carrie Richter, Deputy City Attorney
DATE: April 5, 2018
RE: Island Annexations

At the Planning Commission's hearing on February 12, Commissioner Espe asked for clarification about "island" annexations and how they are addressed under state law. This memorandum is an attempt to explain some element of the island annexation requirements of state law.

Island annexations are authorized by ORS 222.750.¹ Under that statute, a city may annex land that is entirely surrounded by the corporate boundaries of the city after providing notice and holding a public hearing.² In an island annexation, the City may initiate an annexation of the surrounded property regardless of whether the owners within the island area consent to the annexation or not.

ORS 222.750 is permissive in that local governments may decide to annex an island over an owner's objection, but a city need not do so. This permissive authorization is

¹ In relevant part, ORS 222.750 provides:

"(2) When territory not within a city is surrounded by the corporate boundaries of the city, or by the corporate boundaries of the city and the ocean shore, a river, a creek, a bay, a lake or Interstate Highway 5, the city may annex the territory pursuant to this section after holding at least one public hearing on the subject for which notice has been mailed to each record owner of real property in the territory proposed to be annexed.

"(4) Unless otherwise required by its charter, annexation by a city under this section must be by ordinance or resolution subject to referendum, with or without the consent of any owner of real property within the territory or resident in the territory."

² A river or Interstate 5 may also serve as part of the boundaries surrounding an unincorporated island.

implemented in Policy 14.4.3 of the Oregon City Comprehensive Plan, which provides, in relevant part:

“Policy 14.4.3

“Evaluate and in some instances require that parcels adjacent to proposed annexations be included to:

- “avoid creating unincorporated islands within the city.”

Historically, the City has had a practice of encouraging the inclusion of land in an annexation proposal that otherwise would remain an island in part because voter consent was required in order to change the city boundaries under Section 3 of the Oregon City Charter.³

The adoption of Senate Bill 1573 in 2016 changed some of the underlying presumptions. SB 1573 authorizes a city to annex lands without being sent to a vote of the City under certain circumstances, notwithstanding any city charter limitation to the contrary. One of those circumstances is that there is unanimous consent to the annexation from the owners of the property in the area to be annexed. If all of the owners do not consent to the annexation, SB 1573 would not apply and the annexation would be subject to voter approval under the City’s charter.

Therefore, although state law does allow annexation of land without consent, including the annexation of islands, the City’s charter limitation would require an election in all cases where the unanimous consent is secured.

As explained in the staff report, the Planning Commission must determine whether approving this application, given that it will result in the creation of a three-property island satisfies Plan Policy 14.4.3. Does Plan Policy 14.4.3 prohibit the creation of islands? If the answer is no, in what circumstances would an annexation that resulted in an island be acceptable? Does it make any difference if the island remainder will interfere with the extension of public utilities and services necessary to facilitate

³ To be clear, the voter consent here involves the consent of the citizens of Oregon City. Any annexation requires dual consent, in that there must be consent from both the property being annexed and the city to which it is being annexed. Typically, consent of the area to be annexed is provided by the double or triple majority process, but it can be foregone if the area is an island, as discussed above. Under state law, the city governing body can provide consent on behalf of the city, but in Oregon City, the Charter requires that the consent be provided by a vote of the citizens of Oregon City.

urbanization of this area? Are there other harms that result from permitting an island that would discourage any approval that would create an island in this case?

The Planning Commission's options with regard to the island issue include:

- Allow the creation of the island in this case because it will not interfere with the urbanization of the surrounding lands. Plan Policy 14.4.3 is satisfied, notwithstanding the island;
- Require that the applicant amend the application in order to satisfy Plan Policy 14.4.3, to include all adjacent property owners, including those remaining in the island. The effect will be to require that any approval is subject to review by the voters; or
- Deny the annexation application upon a finding that Plan Policy 14.4.3 is not met.