

MEMORANDUM

TO: Honorable Mayor Holladay and City Commissioners
FROM: Deputy City Attorney Carrie A. Richter
DATE: July 11, 2018
RE: Home Rule, Voter Approval for Annexation and SB 1573

In 2016, the Oregon Legislature adopted Senate Bill 1573, which requires a city to annex lands without voter approval, notwithstanding any city charter limitation to the contrary, in cases where:

- The annexation includes unanimous consent from the owners seeking to annex;
- The land is already included within a city or Metro urban growth boundary;
- Upon annexation, the area will be subject to a city acknowledged comprehensive plan;
- At least one parcel is contiguous with the city limits; and
- The proposal complies with all other city requirements.

A copy of the bill is attached to this memorandum.

Some citizens have expressed concern that the City's processing of annexations pursuant to SB 1573 is a violation of, not only the City Charter, but also the Oregon Constitution, which protects a municipal home rule authority from state inference, in certain cases. This issue is currently the subject of litigation between the Cities of Corvallis and Philomath and the State of Oregon. Although the City Commission has been briefed on this case previously, this memorandum offers a more robust summary of the issues along with an update follows in an effort to respond to these citizen concerns.

Upon enactment of SB 1573, and after receiving numerous annexation applications without voter approval, the City of Corvallis adopted a resolution explaining its intent to refer all annexation requests to the voters, notwithstanding SB 1573. Around that same time, it joined the City of Philomath in filing a declaratory judgment action in Benton County Circuit Court, asking the court to determine whether SB

1573 or the City's Charter should control.¹ As part of the complaint, the Cities alleged that annexation was a matter of local concern, protected by a number of provisions of the Oregon Constitution, including Article XI, § 2,² and that SB 1573 constitutes an unconstitutional intrusion into local governance.

In February of 2017, the Cities moved for summary judgment asking the court to rule on the constitutionality of the law. The circuit court ruled in favor of the state in upholding SB 1573. The court's reasoning gets complicated quickly but in summary, the court found that the local charters do not conflict with SB 1573 because those provisions allow for annexation without a vote if required by state law. In other words, the "unless mandated by state law" clause in the charter makes clear that state law may identify circumstances when a vote is not required. In specifically considering Article XI, § 2, the court found that cities do not have home rule authority to annex lands outside their boundaries but derive that authority from state law. Because the legislature provides the authority for annexation, the court reasoned, it may also provide the procedures a city must follow. The court went on to find that these procedures do not truncate a city's internal decision-making processes because it had the opportunity to evaluate the suitability of the land for inclusion in the urban growth boundary and also to evaluate whether an annexation satisfies local land use regulations.

The Cities appealed this adverse decision to the Oregon Court of Appeals. The League of Oregon Cities has filed an amicus brief on behalf of the Cities.³ The briefs have been filed and oral argument is scheduled for July 13, 2018. There is no deadline for when the court must rule but the parties have surmised that it will be a year or two before there is a ruling. The City of Oregon City is not bound by the Benton County ruling but it will be bound by the Court of Appeals decision, once issued.

¹ The City of Oregon City's Charter requiring voter approval is nearly identical to the one at issue in Corvallis and Philomath. Section 3 of the Oregon City Charter provides, in relevant part:

Unless mandated by law, the city shall include all territory encompassed by its boundaries as they now exist or hereafter are modified by the voters.

Section 53 of the Corvallis City Charter provides:

Unless mandated by state law, annexation, delayed or otherwise, to the City of Corvallis may only be approved by a prior majority vote among the electorate.

Section 11.1 of the Philomath City Charter provides:

Unless mandated by state law, annexations to the city of Philomath may only be approved by a prior majority vote among the electorate.

² Oregon Constitution Article XI, § 2 provides, in relevant part:

The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation for any municipality, city or town.

³ Interestingly, the League of Women Voters argued in favor of the cities' position citing its strong support for home rule. However, it has since changed its position, arguing in favor of annexations as necessary to provide much needed housing.

At the time of the circuit court ruling, Corvallis and Philomath filed for a stay with both the circuit court and the Oregon Court of Appeals, which would have allowed the Cities to continue to follow their Charters and Municipal Codes while the decision was on appeal. The stay requests were denied in both courts upon a finding that the Cities failed to establish an irreparable harm would result from complying with the new law.

Although the City Charters and Municipal Codes in Corvallis and Philomath require all annexation applications received be referred to the voters, given the decision by the Benton County Circuit Court and the lack of any court-ordered stay, the Corvallis / Philomath city attorney advised the City Councils that these Cities had no legal standing on which to send an annexation request received via application to the voters. At this point, the Corvallis and Philomath City Councils are processing annexation requests consistent with SB 1573 and have expanded their boundaries without voter approval.

The City Commission has been briefed on these issues as the Corvallis case unfolded and as annexation applications have been reviewed. The Oregon City City Attorney's office has advised the Oregon City Commission that, unless it wishes to file its own separate declaratory judgment action in Clackamas County and seek a stay of enforcement request, it should continue to process annexation requests in the manner required by state law.