

Council Business Meeting

December 21, 2021

Agenda Item	Second Reading for Annexation Code Amendments and Adoption of Findings	
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SUMMARY

The City Council is being asked to consider second reading on the proposed land use code amendments to the annexations standards in Chapter 18.5.8 Annexations of the Ashland Municipal Code (AMC), and to approve the Findings of Facts and Conclusions of Law document. The draft code amendments and meeting materials are available on the project web page at www.ashland.or.us/annexationcodeupdate.

The annexation code amendments are intended to: 1) address the issues raised before the Land Use Board of Appeals (LUBA) in the appeal of the city's annexation approval that included two parcels totaling 16.87 acres located at 1511 Highway 99N (Applicant: Kendrick Enterprise LLC and Casita Developments); 2) provide clear standards for the evaluation of needed housing; and 3) to provide clarity and responsiveness in Ashland's development process.

The annexation code amendments are focused in three areas – providing a process for the approval authority to consider requests for relief from the annexation standards (e.g., exceptions and variances), creating consistency in terminology (e.g., site, parcel, lot), and providing clear, measurable standards for connections to and improvements of public utilities and the transportation system.

The Planning Commission reviewed the attached Findings, Facts and Conclusions of Law document at the December 14, 2021 meeting and unanimously recommended approval. The Findings of Facts and Conclusions of Law document summarizes the consistency of the code amendments with City of Ashland approval criteria for a legislative amendment to the land use code, the Statewide Planning Program Land Use Goals, and applicable state law and administrative rules.

POLICIES, PLANS & GOALS SUPPORTED

The annexation standards and application process affect the amount of land brought into the city limits for development, including the housing needed to accommodate existing and future residents. The clarity of the and annexation standards and the predictability of the annexation process impacts the supply of land available to accommodate future growth and housing.

The *2019-2021 City Council Biennial Goals* identify housing needs as a moderate priority for developing and/or enhancing value services.

The 2021-2041 Housing Capacity Analysis (HCA) found that annexation of land from the urbanizing area (UGB) into the city limits is necessary to accommodate Ashland's population growth over the next 20 years. The HCA recommended the city identify opportunities to create greater certainty and clarity in the annexation process to ensure Ashland has an adequate supply of land available and serviced to accommodate

future growth. The HCA is a technical study required by state law and was adopted by the City Council on [August 17, 2021](#) as a technical report and supporting document to the *Ashland Comprehensive Plan*.

Similarly, the 2019 Ashland Housing Strategy Implementation Plan found that a lack of clarity in annexation policies can impede the development of needed housing:

Existing [annexation] policies were intended to help ensure orderly growth; however, this is the role of the City's Urban Growth Boundary (UGB). Creating obstacles to annexing land within the UGB for housing contributes to higher land costs and makes it difficult to find land for larger housing developments.

The *Ashland Comprehensive Plan* includes a goal in the Housing Element to “ensure a range of different dwelling types that provide living opportunities for the total cross section of Ashland’s population (6.10.01).” Included with this goal are the following applicable policies: “Policy 1: Provide for a mix of housing types that are attractive and affordable to a diversity of ages, incomes, household sizes, and household types.” The Housing Element includes another goal to “support the creation and preservation of housing that is affordable to low and moderate income households and that is commensurate with the incomes of Ashland’s workforce (6.10.02).” Annexation proposals are required to provide affordable housing.

PREVIOUS COUNCIL ACTION

The City Council held a public hearing and approved first reading of the Ordinance 3204, An ordinance amending chapters 18.4.6, 18.5.8 and 18.61 of the Ashland Land Use Ordinance regarding annexations. The Council received a project update at the November 1, 2021 study session meeting.

BACKGROUND AND ADDITIONAL INFORMATION

The word “reasonably” was removed from the subsections 18.5.8.050.E.2 and 18.5.8.050.E.3 on pages 6 and 7 of the attached ordinance as directed by the City Council at the December 7, 2021 meeting. The language will now read as follows.

For bicycle transportation safe and accessible bicycle facilities **according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation)** exist, or can and will be constructed.

For pedestrian transportation safe and accessible pedestrian facilities **according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation)**. exist, or can and will be constructed.

No other changes were made to the attached ordinance.

FISCAL IMPACTS

The review of development proposals, including annexations, is currently part of the work flow for Planning Division staff. The amendments to the annexation standards are not expected to impact existing workload, but rather anticipated to increase the efficiency of the City’s land use review and approval process.

STAFF RECOMMENDATION

Staff recommends adoption of the annexation code amendments as recommended by the Planning Commission. The attached ordinance reflects the Planning Commission recommendation.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

A motion for approval of second reading of the ordinance and a motion for approval of the Findings of Fact and Conclusions of Law document is included below.

1. Motion for Approval of Second Reading of Ordinance 3204

The attached ordinances reflect the Planning Commission recommendation.

- I move to approve second reading of Ordinance 3204, which is titled, “An ordinance amending chapters 18.4.6, 18.5.8 and 18.61 of the Ashland Land Use Ordinance regarding annexations.”

2. Motion to Approve Findings of Fact and Conclusions of Law for PA-L-2021-00012

- I move to approve the Findings of Fact and Conclusions of Law for PA-L-2021-00012.

REFERENCES & ATTACHMENTS

1. Ordinance 3204, An ordinance amending chapters 18.4.6, 18.5.8 and 18.61 of the Ashland Land Use Ordinance regarding annexations.
2. Findings of Fact and Conclusions of Law for PA-L-2021-00012
3. Meeting Materials www.ashland.or.us/annexationcodeupdate

1 urbanizing area (UGB) into the city limits is necessary to accommodate Ashland’s population
2 growth over the next 20 years. The HCA recommended the City identify opportunities to create
3 greater certainty and clarity in the annexation process to ensure Ashland has an adequate supply
4 of land available and serviced to accommodate future growth.; and

5
6 **WHEREAS**, the 2019 Ashland Housing Strategy Implementation Plan also found that a lack of
7 clarity in annexation policies can impede the development of needed housing; and

8
9 **WHEREAS**, the annexation approval criteria put forth in chapter 18.5.8.050 of the Ashland
10 Municipal Code do not allow the city to approve exceptions and variances to the annexation
11 approval criteria.; and

12
13 **WHEREAS**, the standards and approval criteria for development within the City Limits allow
14 the City Planning Commission or City Council to consider approval of variances under chapter
15 18.5.5 Variances, and exceptions under Section 18.4.6.020.B.1.; and

16
17 **WHEREAS**, amendments to the annexation criteria in 18.5.8.050 are needed to allow for
18 consideration of exceptions and variances to accommodate unique or unusual conditions and
19 provide for an equitable review process that is consistent with the planning application process
20 that is applied to developments within the City Limits.; and

21
22 **WHEREAS**, the City of Ashland Planning Commission conducted on November 9, 2021 a duly
23 advertised public hearing on amendments to the Ashland Land Use Ordinance concerning the
24 standards relating to annexations, and following deliberations recommended approval of the
25 amendments.; and

26
27 **WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing
28 on the above-referenced amendments December 7, 2021.; and

1 **WHEREAS**, the City Council of the City of Ashland, following the close of the public hearing
2 and record, deliberated and conducted first and second readings approving adoption of the
3 Ordinance in accordance with Article 10 of the Ashland City Charter.; and
4

5 **WHEREAS**, the City Council of the City of Ashland has determined that in order to protect and
6 benefit the health, safety and welfare of existing and future residents of the City, it is necessary to
7 amend the Ashland Municipal Code and Land Use Ordinance in manner proposed, that an adequate
8 factual base exists for the amendments, the amendments are consistent with the comprehensive
9 plan and that such amendments are fully supported by the record of this proceeding.
10

11 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**
12

13 **SECTION 1.** The above recitations are true and correct and are incorporated herein by this
14 reference.
15

16 **SECTION 2.** Section 18.4.6.020 [Applicability – Public Facilities] of the Ashland Land Use
17 Ordinance is hereby amended to read as follows:

18 **18.4.6.020 Applicability**

- 19 **A. Applicability.** Chapter 18.4.6 applies to all new development, ~~including projects subject~~
20 ~~to Land Division (Subdivision or Partition) approval and developments subject to Site~~
21 ~~Design Review, and planning actions requiring a Type I, Type II, or Type III review~~
22 ~~procedure~~ where public facility improvements are required. All public facility improvements
23 within the City shall occur in accordance with the standards and procedures of this chapter.
- 24 **B. Exceptions and Variances.** Requests to depart from the requirements of this chapter are
25 subject to chapter 18.5.5 Variances, except that deviations from section 18.4.6.040 Street
26 Design Standards are subject to 18.4.6.020.B.1 Exceptions to the Street Design Standards,
27 below.
- 28 1. Exception to the Street Design Standards. The approval authority may approve exceptions
29 to the ~~standards section in 18.4.6.040~~ Street Design Standards in section 18.4.6.040 if all
30 of the following circumstances the circumstances in either subsection a or b below,
are found to exist.
- a. There is demonstrable difficulty in meeting the specific requirements of this chapter
due to a unique or unusual aspect of the site or proposed use of the site.; and the
exception is the minimum necessary to alleviate the difficulty; and the
exception is consistent with the Purpose, Intent, and Background of the Street

1 Design Standards in subsection 18.4.6.040.A; and the exception will result in
2 equal or superior transportation facilities and connectivity considering the
3 following factors where applicable.

4 ~~b. The exception will result in equal or superior transportation facilities and~~
5 ~~connectivity considering the following factors where applicable.~~

- 6 i. For transit facilities and related improvements, access, wait time, and ride
7 experience.
8 ii. For bicycle facilities, feeling of safety, quality of experience (i.e., comfort level of
9 bicycling along the roadway), and frequency of conflicts with vehicle cross traffic.
10 iii. For pedestrian facilities, feeling of safety, quality of experience (i.e., comfort level
11 of walking along roadway), and ability to safety and efficiency crossing roadway.;

12 or

13 ~~c. The exception is the minimum necessary to alleviate the difficulty.~~

14 ~~d. The exception is consistent with the Purpose and Intent of the Street~~
15 ~~Standards in subsection 18.4.6.040.A.~~

16 b. There is no demonstrable difficulty in meeting the specific requirements, but
17 granting the exception will result in a design that equally or better achieves the
18 stated Purposes, Intent, and Background of the Street Design Standards in
19 subsection 18.4.6.040.A.

20 **SECTION 3.** The Annexations Chapter of Ashland Land Use Ordinance is hereby amended as
21 follows:

22 **18.5.8.010 Purpose**

23 ~~This chapter contains~~ The purpose of this chapter is to establish procedures and approval
24 criteria for the ~~Annexation~~ annexation of land to provide for the orderly expansion of the City
25 and ~~adequate provision of~~ public facilities and services, consistent with the provisions of
26 the Oregon Revised Statutes (ORS) including ORS Chapter 222 or successor state
27 statute.

28 **18.5.8.020 Applicability and Application Submission Requirements**

29 Except for annexations initiated pursuant to section 18.5.8.040, application for annexation shall
30 include the following information.

- 31 **A.** Consent to annexation, which is non-revocable for a period of one year from its date.
32 **B.** Agreement to deposit an amount sufficient to retire any outstanding indebtedness of special
33 districts defined in ORS 222.510.
34 **C.** Boundary description and map prepared in accordance with ORS 308.225. Such description
35 and map shall be prepared by a registered land surveyor. The boundaries shall be surveyed
36 and monumented as required by statute subsequent to City Council approval of the

1 proposed annexation.

2 **D. Written findings addressing the criteria and standards in section ~~18.5.8.040~~18.5.8.050.**

3 **E. Written request by the property owner for a zone change. Provided, however, no written**
4 **request shall be necessary if the annexation has been approved by a majority vote in an**
5 **election meeting the requirements of Section 11g of Article XI of the Oregon Constitution**
(Ballot Measure No. 47).

6 **F. For annexation applications not initiated by the City, a concurrent filing of a planning**
7 **application (e.g., Site Design Review, Subdivision, or Land Division) for the**
8 **development of the annexed area.**

9 **18.5.8.030 Applicability and Review Procedure**

10 All annexations shall be processed under the Type III procedure. **Except for City-initiated**
11 **annexations, annexation applications require an accompanying planning application for**
12 **the development of the entirety of the annexed area in accordance with applicable**
13 **procedure and approval criteria in chapter 18.5.1. General Review Procedures concurrent**
with the annexation application.

14 **A. Legislative Authority. Annexations are a legislative decision and the City Council**
15 **makes the final decision on annexations in accordance with subsection**
16 **18.5.1.010.B.4. The City Council may require improvements to public facilities, such**
17 **as utilities and streets, as a condition to annexation approval, in addition to the**
18 **requirements of section 18.5.8.050, and grant exceptions and variances to the criteria**
and standards in accordance with subsection 18.5.8.050.I.

19 **18.5.8.040 Initiation by City Council or Planning Commission**

20 The City Council or Planning Commission on its own motion may initiate a proposal for
21 annexation. The **applicable** approval criteria and standards in section 18.5.8.050 shall apply **to**
22 **City-initiated annexation applications. Provided, however, that in the case of annexation**
23 **pursuant to section 18.5.8.050.H.3 (current or probable public health hazard due to lack**
24 **of full City sanitary sewer or water services) or section 18.5.8.030.H.6 (the lot or lots**
proposed for annexation are an island completely surrounded by lands within the city
limits), the approval standards in subsections 18.5.7.050.E, F and G shall not apply.
25 **Annexations initiated to address dangers to public health shall follow the process and be**
26 **subject to the criteria in ORS Chapter 222 or successor state statute.**

27 **18.5.8.050 Approval Criteria and Standards**

28 **An annexation may be approved if the proposed request for annexation conforms, or can**
29 **be made to conform through the imposition of conditions, with all of the following**
30 **approval criteria. An application for an annexation may be approved if the proposal**
meets the applicable criteria in subsections A through H below. The approval authority

1 may, in approving the application, impose conditions of approval consistent with the
2 applicable criteria and standards, and grant exceptions and variances to the criteria and
3 standards in this section in accordance with subsection 18.5.8.050.I.

4 A. The ~~land~~annexed area is within the City's Urban Growth Boundary.

5 ~~B. The proposed zoning for the annexed area is in conformance with the designation~~
6 ~~indicated on the Comprehensive Plan Map, and the project, if proposed concurrently~~
7 ~~with the annexation, is an allowed use within the proposed zoning. The annexation~~
8 ~~proposal is consistent with the Comprehensive Plan plan designations applicable to~~
9 ~~the annexed area, including any applicable adopted neighborhood, master, or area~~
10 ~~plan, and is an allowed use within the proposed zoning.~~

11 C. The ~~land~~annexed area is ~~currently~~ contiguous with the ~~present~~-city limits.

12 D. Adequate City facilities for the provision of water to the ~~site~~annexed area as determined by
13 the Public Works Department; the transport of sewage from the ~~site~~annexed area to the
14 ~~waste water treatment plant~~an approved waste water treatment facility as determined
15 by the Public Works Department; the provision of electricity to the ~~site~~annexed area as
16 determined by the Electric Department; urban storm drainage as determined by the Public
17 Works Department can and will be provided ~~to and through~~from the ~~subject~~
18 ~~property~~annexed area. Unless the City has declared a moratorium based upon a shortage
19 of water, sewer, or electricity, it is recognized that adequate capacity exists system-wide for
20 these facilities. All required public facility improvements shall be constructed and
21 installed in accordance with 18.4.6.030.A.

22 E. Adequate transportation can and will be provided ~~to and through~~to serve the ~~subject~~
23 ~~property~~annexed area. For the purposes of this section "adequate transportation" for
24 annexations consists of vehicular, bicycle, pedestrian, and transit transportation meeting the
25 following standards.

- 26 1. For vehicular transportation a minimum 2022-foot wide paved access exists, or can and
27 will be constructed, along the full frontage of the project site providing access to the
28 annexed area to from the nearest fully improved collector or arterial street. All streets
29 adjacent to bordering on the annexed area shall be improved, at a minimum, to an
30 applicable City half-street standard with a minimum 20-foot wide driving surface.
The ~~City approval authority~~ may, after assessing the impact of the development,
require the full improvement of streets adjacent to bordering on the annexed area. All
streets located within annexed areas shall be fully improved to City standards unless
exception criteria apply. Where future street dedications are indicated on the Street
Dedication Map or required by the City, provisions shall be made for the dedication and
improvement of these streets and included with the application for annexation.
2. For bicycle transportation safe and accessible bicycle facilities according to the safety
analysis and standards of the governing jurisdiction of the facility or street (e.g.,
City of Ashland, Jackson County, Oregon Department of Transportation) exist, or
can and will be constructed. Should the ~~annexation be adjacent to~~annexed area
border an arterial street, bike lanes shall be ~~provided on or adjacent to the arterial~~
street constructed along the arterial street frontage of the annexed area. Likely

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bicycle destinations within a quarter of a mile from the ~~project site~~annexed area shall be determined and ~~safe and accessible bicycle facilities serving these destinations shall be indicated~~the approval authority may require the construction of bicycle lanes or multi-use paths connecting the annexed area to the likely bicycle destinations after assessing the impact of the development proposed concurrently with the annexation.

3. For pedestrian transportation safe and accessible pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or street (e.g., City of Ashland, Jackson County, Oregon Department of Transportation). exist, or can and will be constructed. Full sidewalk improvements shall be provided on one side ~~adjacent to the annexation for~~of all streets ~~adjacent to~~bordering on the proposed annexed area. Sidewalks shall be provided as required by ordinance on all streets within the annexed area. Where the ~~project site~~annexed area is within a quarter of a mile of an existing sidewalk system or a location with demonstrated significant pedestrian activity, the approval authority may require sidewalks, walkways or multi-use paths, ~~the sidewalks from the project site shall~~to be constructed ~~to extend~~ and connect to either or both the existing system and locations with significant pedestrian activity. ~~Likely pedestrian destinations from the project site shall be determined and the safe and accessible pedestrian facilities serving these destinations shall be indicated.~~

4. For transit transportation, should transit service be available to the ~~site~~annexed area, or be likely to be extended to the ~~site~~annexed area in the future based on information from the local public transit provider, ~~provisions shall be made for~~ the approval authority may require construction of ~~adequate~~ transit facilities, such as bus shelters and bus turn-out lanes. ~~All required transportation improvements shall be constructed and installed prior to the issuance of a certificate of occupancy for any new structures on the annexed property.~~

5. Timing of Transportation Improvements. All required transportation improvements shall be constructed and installed in accordance with 18.4.6.030.A.

F. For all residential annexations, a plan shall be provided demonstrating that the development of the ~~entire property~~annexed area will ultimately occur at a minimum density of 90 percent of the base density for the zone, unless reductions in the total number of units ~~is~~are necessary to accommodate significant natural features, topography, access limitations, or similar physical constraints. The owner or owners of the ~~property~~annexed area shall sign an agreement, to be recorded with the county clerk after approval of the annexation, ensuring that future development will occur in accord with the minimum density indicated in the development plan. For purposes of computing maximum density, portions of the annexed area containing ~~undevelopable~~unbuildable lots, parcels, or portions of the annexed area such as existing streets and associated rights-of-way, railroad facilities and property, wetlands, floodplain corridor lands, slopes greater than 35 percent, or land area dedicated as a public park, shall not be included.

G. Except as provided in 18.5.8.050.G.7, below, annexations with a density or potential density of four residential units or greater and involving residential zoned lands, or commercial,

1 employment or industrial lands with a Residential Overlay (R-Overlay) shall meet the
2 following requirements.

- 3 1. The total number of affordable units provided to qualifying buyers, or to qualifying renters,
4 shall be equal to or exceed 25 percent of the base density as calculated using the unit
5 equivalency values set forth herein. The base density of the **propertyannexed area** for the
6 purposes of ~~this calculation~~ **calculating the total number of affordable units in this**
7 **section** shall exclude any ~~undevelopable~~ **unbuildable lots, parcels, or** portions of the
8 **propertyannexed area** such as **existing streets and associated rights-of-way, railroad**
9 **facilities and property**, wetlands, floodplain corridor lands, water resource areas, slopes
10 greater than 35 percent, or land area dedicated as a public park.
 - 11 a. Ownership units restricted to households earning at or below 120 percent the area
12 median income shall have an equivalency value of 0.75 unit.
 - 13 b. Ownership units restricted to households earning at or below 100 percent the area
14 median income shall have an equivalency value of 1.0 unit.
 - 15 c. Ownership or rental units restricted to households earning at or below 80 percent the
16 area median income shall have an equivalency value of 1.25 unit.
- 17 2. As alternative to providing affordable units per section 18.5.8.050.G.1, above, the
18 applicant may provide title to a sufficient amount of buildable land for development
19 complying with subsection 18.5.8.050.G.1.b, above, through transfer to a non-profit (IRC
20 501(3)(c) affordable housing developer or public corporation created under ORS
21 456.055 to 456.235.
 - 22 a. The land to be transferred shall be located within the project meeting the standards
23 set forth in **sections 18.5.8.050.G.5 and, subsections 5 – 6 and 18.5.8.050.G.6.**
 - 24 b. All needed public facilities shall be extended to the area or areas proposed for
25 transfer.
 - 26 c. Prior to commencement of the project, title to the land shall be transferred to the City,
27 an affordable housing developer which must either be a unit of government, a non-
28 profit 501(C)(3) organization, or public corporation created under ORS 456.055 to
29 456.235.
 - 30 d. The land to be transferred shall be deed restricted to comply with Ashland's
affordable housing program requirements.
 - e. Transfer of title of buildable land in accordance with this subsection shall exempt the
project from the development schedule requirements set forth in 18.5.8.050.G.4.
3. The affordable units shall be comparable in bedroom mix with the market rate units in
the development.
 - a. The number of bedrooms per dwelling unit in the affordable units within the
residential development shall be in equal proportion to the number of bedrooms per
dwelling unit in the market-rate units within the residential development. This
provision is not intended to require the same floor area in affordable units as
compared to market-rate units. The minimum square footage of each affordable unit

1 shall comply with the minimum required floor area based as set forth in Table
2 18.5.8.050.G.3, or as established by the U.S. Department of Housing and Urban
3 Development (HUD) for dwelling units developed under the HOME program.

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Unit Type	Minimum Required Unit Floor Area (Square Feet)
Studio	350
1 Bedroom	500
2 Bedroom	800
3 Bedroom	1,000
4 Bedroom	1,250

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- 12 4. A development schedule shall be provided that demonstrates that that the affordable
13 housing units per subsection 18.5.8.050.G shall be developed, and made available for
14 occupancy, as follows.
- 15 a. That 50 percent of the affordable units shall have been issued building permits prior
16 to issuance of a certificate of occupancy for the last of the first 50 percent of the
17 market rate units.
- 18 b. Prior to issuance of a building permit for the final ten percent of the market rate units,
19 the final 50 percent of the affordable units shall have been issued certificates of
20 occupancy.
- 21 5. That affordable housing units shall be constructed using comparable building materials
22 and include equivalent amenities as the market rate units.
- 23 a. The exterior appearance of the affordable units in any residential development shall
24 be visually compatible with the market-rate units in the development. External
25 building materials and finishes shall be substantially the same in type and quality for
26 affordable units as for market-rate units
- 27 b. Affordable units may differ from market-rate units with regard to floor area, interior
28 finishes and materials, and housing type provided that the affordable housing units
29 are provided with comparable features to the market rate units, and shall have
30 generally comparable improvements related to energy efficiency, including plumbing,
insulation, windows, appliances, and heating and cooling systems.
6. Exceptions to the requirements of 18.5.8.050, subsections G.2 – G.5, above, may be
approved by the City Council upon consideration of one or more of the following.
- a. That an alternative land dedication as proposed would accomplish additional benefits
for the City, consistent with the purposes of this chapter, then would development
meeting the on-site dedication requirement of subsection 18.5.8.050.G.2.

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- b. That the alternative phasing proposal not meeting subsection 18.5.8.050.G.4 provided by the applicant provides adequate assurance that the affordable housing units will be provided in a timely fashion.
 - c. That the materials and amenities applied to the affordable units within the development, that are not equivalent to the market rate units per subsection ~~18.5.8.050.G.6~~18.5.8.050.G.5, are necessary due to local, State, or Federal Affordable Housing standards or financing limitations.
7. The total number of affordable units described in this section 18.5.8.050.G shall be determined by rounding ~~down~~up fractional answers to the nearest whole unit. A deed restriction or similar legal instrument shall be used to guarantee compliance with affordable criteria for a period of not less than 60 years for units qualified as affordable rental housing, or 30 years for units qualified as affordable for-purchase housing.

H. One or more of the following standards are met.

- ~~1. The proposed area for annexation is to be residentially zoned, under the Comprehensive Plan, and that the applicant will obtain planning action approval for an outright permitted use, special permitted use, or conditional use in conformance with the annexation request. The annexation proposal shall meet the requirements of subsection 18.5.8.080.B, above.~~
- ~~2. The proposed lot or lots will be zoned M-1, CM, E-1, or C-1 under the Comprehensive Plan, and that the applicant will obtain Site Design Review approval for an outright permitted use, or special permitted use concurrent with the annexation request.~~
- ~~32.~~ A current or probable danger to public health ~~hazard~~ exists within the proposed area for annexation due to lack of full City sanitary sewer or water services in accordance with the criteria in ORS Chapter 222 or successor state statute.
- ~~43.~~ Existing development in the proposed area for annexation has inadequate water or sanitary sewer service, or the service will become inadequate within one year.
- ~~54.~~ The ~~area~~ proposed area for annexation has existing City water or sanitary sewer service extended, connected, and in use, and a signed consent to annexation agreement has been filed and accepted by the City.
- ~~65.~~ The ~~lot or lots~~ proposed area for annexation ~~are~~is an island ~~completely~~ surrounded by lands within the city limits.

I. Exceptions and Variances to the Annexation Approval Criteria and Standards. The approval authority may approve exceptions to and variances from the approval criteria and standards in this section using the criteria in section 18.4.6.020.B.1 Exceptions to the Street Design Standards or chapter 18.5.5. Variances.

18.5.8.060 Boundaries

When an annexation is initiated by ~~a private individual~~ an applicant other than the City, the

1 Staff Advisor may include other ~~parcels of property~~land in the proposed annexation in order
2 to make a boundary extension more logical, to address the effective extension of public
3 facilities, and/or to avoid ~~parcels~~an area of land which ~~are~~is not incorporated but ~~are~~is
4 partially or wholly surrounded by the City. The Staff Advisor, in a report to the Planning
5 Commission and City Council, shall justify the inclusion of any ~~parcels~~land other than the
6 ~~parcels~~land for which the ~~petition~~annexation is filed. ~~The purpose of this section is to permit~~
7 ~~the Commission and Council to make annexations extending the City's boundaries more~~
8 ~~logical and orderly.~~

7 **18.5.8.070 Statutory Procedures**

8 The applicant for the annexation shall also declare which procedure under ORS chapter 222 the
9 applicant proposes that the Council use, and supply evidence that the approval through this
10 procedure is likely.

11 **SECTION 4.** Section 18.6.1.030 [Definitions - Definitions] of the Ashland Land Use Ordinance
12 is hereby amended to read as follows:

13 **18.6.1.030 Definitions**

14 The following definitions are organized alphabetically.

15
16 **Annexed Area. A property or group of adjacent properties, including public right-of-way,**
17 **to be annexed.**

18
19 **Contiguous. That a lot, parcel, site, or annexed area has a common boundary, including a**
20 **boundary that only touches a common point. For purposes of annexation,**
21 **“contiguous” also means a property or group of adjacent properties, including public**
22 **right-of-way to be annexed, that touch the city limits at any point along any exterior**
23 **boundary of the territory to be annexed or that is separated from the city limits only**
24 **by a public right-of-way or a stream, bay, lake or other body of water.**

25 **Lot. A unit of land created by a subdivision** ~~A legally created piece of land other than a~~
26 **tract that is the result of land division,** or a unit or contiguous units of land under single
27 ownership, which complies with all applicable laws at the time such lots were created. ~~Any~~
28 ~~contiguous ownership of non-conforming lots will be considered one tract of land.~~
29 **The term “lot” is used in this ordinance to apply to the state definition of both lot, the**
30 **result of subdividing, and parcel, the result of partitioning, unless otherwise noted.**

- **Corner Lot.** A lot abutting the intersection of two or more streets other than an alley.
See Figure below.

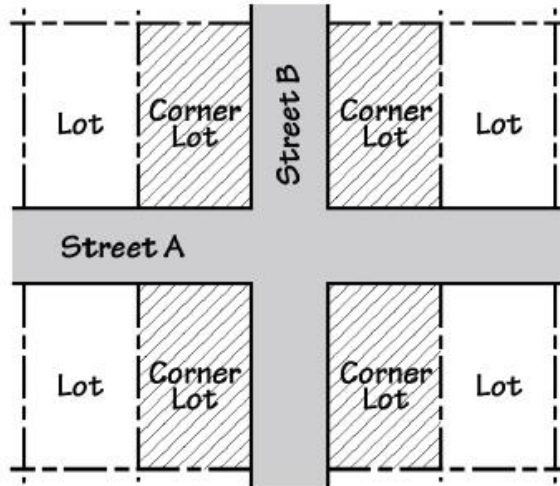


Figure 3
Corner Lots

Flag Lot. A lot with two distinct parts. See Figure below.

1. The flag, which is the building site; and is located behind another lot.
2. The pole, which connects the flag to the street; provides the only street frontage for the lot with less than 40 feet of frontage on a street; and unless an alley provides access, includes a driveway providing access.

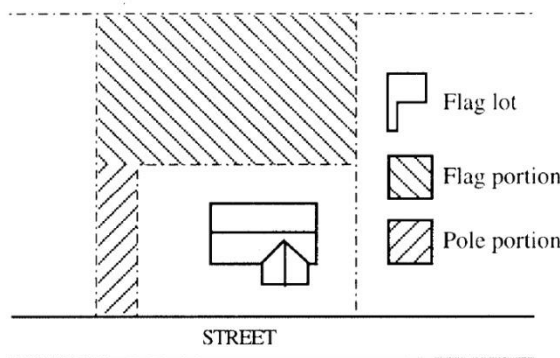


Figure 4
Flag Lot

- **Interior Lot.** A lot other than a corner or flag lot.
- **Through Lot.** An interior lot having frontage on two parallel or approximately parallel streets other than alleys. Such a lot has one front yard fronting on the primary public street.

Parcel. A legally defined area of land created through a partition or otherwise lawfully created pursuant to state law. The term “parcel” is used in this ordinance to apply to the state definition of both lot, the result of subdividing, and parcel, the result of partitioning, unless otherwise noted.

1 **Partition.** To divide an area or tract of land into not more than three parcels within 12 months.
2 **For the purpose of this definition, parcel means a legally defined are of land created**
3 **through a partition.**

- 4 - Major Land Partition. A partition which necessitates the creation of a road or street.
- 5 - Minor Land Partition. A partition that does not necessitate the creation of a road or street.

6 **Tract. A piece of land within a platted subdivision reserved for open space, utility**
7 **corridor, recreation facilities, sensitive lands, or other purpose; may be dedicated to**
8 **an owner's association or other entity for maintenance.**

9 **SECTION 5. Codification.** In preparing this ordinance for publication and distribution, the City
10 Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within such
11 limitations, may:

- 12 (a) Renumber sections and parts of sections of the ordinance;
- 13 (b) Rearrange sections;
- 14 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
- 15 (d) Delete references to repealed sections;
- 16 (e) Substitute the proper subsection, section, or chapter numbers;
- 17 (f) Change capitalization and spelling for the purpose of uniformity;
- 18 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 19 (h) Correct manifest clerical, grammatical, or typographical errors.

20
21 **SECTION 6. Severability.** Each section of this ordinance, and any part thereof, is severable,
22 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
23 remainder of this ordinance shall remain in full force and effect.

24
25 The foregoing ordinance was first read by title only in accordance with Article X,
26 Section 2(C) of the City Charter on the ___th day of _____, 2021,
27 and duly PASSED and ADOPTED this ___th day of _____, 2021,
28

29 _____
30 Melissa Huhtala, City Recorder

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SIGNED and APPROVED this ____ day of _____, 2021.

Julie Akins, Mayor

Reviewed as to form:

Katrina Brown, City Attorney

**BEFORE THE CITY COUNCIL
CITY OF ASHLAND, JACKSON COUNTY, OREGON**

December 21, 2021

In the matter of Planning Action PA-L-2021-00012)
which includes amendments to the Ashland Municipal)
Code (AMC) Title 18 Land Use to the exception to the) FINDINGS OF FACT AND
street design standards in Chapter 18.4.6 Public Facilities,) CONCLUSIONS OF LAW
to the annexation standards in Chapter 18.5.8)
Annexations, and to the definitions in Chapter 18.6.1)
Definitions.)

PURPOSE:

The proposal includes a series of amendments to AMC Title 18 Land Use to the annexation standards in Chapter 18.5.8 Annexations, as well as related amendments to the exception to the street design standards in Chapter 18.4.6 Public Facilities and to the definitions in Chapter 18.6.1 Definitions. The amendments are intended to: 1) address the issues raised before the Land Use Board of Appeals (LUBA) in the appeal of the city's annexation approval that included two parcels totaling 16.87 acres located at 1511 Highway 99N (Applicant: Kendrick Enterprise LLC and Casita Developments, PA-T3-2019-0000); 2) provide clear standards for annexing land into the city limits for the development of housing; and 3) to provide clarity and responsiveness in Ashland's development process.

PUBLIC HEARINGS:

Notice was published in The Medford Mail Tribune on October 29, 2021 prior to the Planning Commission public hearing, and on November 26, 2021 prior to the City Council public hearing. A public hearing was held at the Planning Commission on November 9, 2021 and at the City Council on December 7, 2021. Notice was also sent to the Department of Land Conservation and Development on October 5, 2021.

SUMMARY OF AMENDMENTS

The amendments to annexation standards are focused in three areas – providing a process for the approval authority to consider requests for relief from the annexation standards (e.g., exceptions and variances), creating consistency in terminology (e.g., site, parcel, lot), and providing clear, measurable standards for connections to and improvements of public utilities and the transportation system.

REVIEW CRITERIA

The decision of the City Council together with the recommendation by the Planning Commission was based on consideration and findings of consistency with the following factors.

- A. Consistency with City of Ashland approval criteria for legislative amendments, AMC 18.5.9.020.B

- B. Consistency with City of Ashland Comprehensive Plan and Other City Policies
- C. Consistency with Oregon Statewide Planning Goals
- D. Consistency with OAR Chapter 660 Division 14 Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands, and ORS 222 Boundary Changes; Mergers; Consolidations; and Withdrawals

EVALUATION AND COUNCIL FINDINGS:

A. Consistency with City of Ashland approval criteria for legislative amendments and zoning map amendments, AMC 18.5.9.020.B

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. *It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.*

1. *Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.*
2. *Comprehensive Plan changes, including text and map changes or changes to other official maps.*
3. *Land Use Ordinance amendments.*
4. *Urban Growth Boundary amendments.*

Ashland Municipal Code (AMC) 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions. The City Council finds it is necessary to amend the land use code to address the issues raised before the Land Use Board of Appeals (LUBA) in the appeal of the city's annexation approval that included two parcels totaling 16.87 acres located at 1511 Highway 99N (Applicant: Kendrick Enterprise LLC and Casita Developments, PA-T3-2019-0000), and to provide clear standards for annexing land into the city limits for the development of housing.

On May 12, 2021, LUBA provided their Final Opinion and Order and reversed the city's annexation approval that included two parcels totaling 16.87 acres at 1511 Highway 99N (Applicant: Kendrick Enterprise LLC and Casita Developments). In reversing the city's approval, LUBA determined that the city's annexation approval criteria do not allow for exceptions because AMC 18.5.8.050 requires either full conformance at the time of the decision or future full conformance through the imposition of conditions. Under the AMC, exceptions to the street standards apply to proposals for new development or land divisions, neither of which were proposed as part of the annexation.

The 2021-2041 Housing Capacity Analysis (HCA) found that annexation of land from the urbanizing area (UGB) into the city limits is necessary to accommodate Ashland's population growth over the next 20 years. The HCA recommended the city identify opportunities to create greater certainty and clarity in the annexation process to ensure Ashland has an adequate supply of land available and serviced to accommodate future growth. The HCA is a technical study required by state law and was adopted by the City Council on [August 17, 2021](#) as a technical report and supporting document to the *Ashland Comprehensive Plan*.

The 2019 Ashland Housing Strategy Implementation Plan also found that a lack of clarity in annexation policies can impede the development of needed housing:

Existing [annexation] policies were intended to help ensure orderly growth; however, this is the role of the City's Urban Growth Boundary (UGB). Creating obstacles to annexing land within the UGB for housing contributes to higher land costs and makes it difficult to find land for larger housing developments.

The City Council finds the land use ordinance amendments are necessary to address the issues raised on appeal before the Oregon Land Use Board of Appeals (LUBA) with the goal of addressing inconsistent and ambiguous language in AMC Chapter 18.5.8 Annexations, and to provide clear standards for annexing land into the city limits for the development of housing.

B. Consistency with the Ashland Comprehensive Plan and other City Policies

The *Ashland Comprehensive Plan* addresses annexation policies in Chapter 12 Urbanization. The stated purpose of this chapter is “to ensure an orderly transition of land from rural to urban uses.” The chapter details the method used in determining the UGB and “the policies the City will use when considering annexation of land within that urban growth boundary.”

Ashland Comprehensive Plan Goal 12.09 says “It is the City of Ashland's goal to maintain a compact urban form and to include an adequate supply of vacant land in the City so as not to hinder natural market forces within the City, and to ensure the orderly and sequential development of land in the City limits.”

The amendments to Chapter 18.5.8 Annexations improve the procedure for review of annexation applications by allowing the City Council to consider exceptions and variances to the annexation standards by using the same process and criteria that is in place for developments located within the city limits. In addition, the amendments clarify the improvements that are required to the transportation system and public utilities for an annexation. The extension of the transportation system and public utilities addresses the goal of orderly development of land that is annexed into the city limits.

The City Council finds and determines that the proposed land use code amendments are consistent with the *Ashland Comprehensive Plan*.

C. Consistency with Oregon Statewide Planning Goals

The *Ashland Comprehensive Plan* was originally adopted by the City Council on November 2, 1982 and acknowledged by the Land Conservation and Development Commission on Oct 7, 1983. Numerous updates were completed and acknowledged since the originally acknowledged plan including but not limited to: Chapter III Citizens Participation and Involvement (2016), Chapter IV Environmental Resources (1991), Chapter V Population Projection and Growth (1991), Chapter VI Housing Element (2019), Chapter VII Economy (1991), Chapter VIII Parks, Open Space and Aesthetics (1991), Chapter X Transportation (1996), Chapter XI Energy, Air, Water, Conservation (1991), and Chapter XIC Regional Plan Element (2012). Technical reports and supporting documents were also acknowledged and adopted as part of the *Ashland Comprehensive Plan* and include but are not limited to the following: Croman Mill Site Redevelopment Plan (2008), Normal Neighborhood Plan Framework (2015), Local Wetland Inventory and Assessment and Riparian Corridor Inventory (2009), Housing Capacity Analysis, (2021), Buildable Lands Inventory (2019), and Transportation System Plan Update (2013). The City follows the post-acknowledgement plan amendment (PAPA) process to update the Plan with new state and regional regulations as necessary and relies in part upon these prior state review processes to demonstrate compliance with all necessary requirements.

OAR 660-014-0060, **Annexations of Lands Subject to an Acknowledged Comprehensive Plan**, says that “A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) or 197.625 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation.” The *Ashland Comprehensive Plan* and Title 18 Land Use do control annexations. The *Ashland Comprehensive Plan* is acknowledged. The amendments to Chapter 18.5. Annexations are consistent with the *Ashland Comprehensive Plan* and do not amend the *Ashland Comprehensive Plan*.

GOAL 1: CITIZEN INVOLVEMENT

To develop a citizen involvement program that ensures the opportunity for cities to be involved in all phases of the planning process.

Finding: The City of Ashland meets this requirement by having the Planning Commission serve as the Committee on Citizen Involvement, as well as having various citizen commissions with opportunities for the public to testify on general or specific matters.

The Planning Commission reviewed the proposed annexation code amendments at three electronic public meetings on [May 25, 2021](#), [August 24, 2021](#), and [September 28, 2021](#). The Planning Commission held an electronic public hearing on [November 9, 2021](#) and recommended approval of the ordinance. The code amendments were also presented to the Transportation Commission on [October 21, 2021](#).¹ Staff updated the City Council on the project at the November 1, 2021 study session.

Opportunities to provide written and oral testimony were available at all of the commission meetings. All of the aforementioned meetings were held electronically because of the City of Ashland emergency declaration for the COVID-19 pandemic that began on March 15, 2020 and the Governor’s Executive Order 20-16 that suspended all in-person public meetings.

A project web page at www.ashland.or.us/annexationcodeupdate with the draft code amendments, meeting materials and reference materials was available throughout the duration of the project and was included in all meeting notices and announcements. This Goal is met.

GOAL 2: LAND USE PLANNING

To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual bases for such decisions and actions.

Finding: The proposed land use code amendments revise the approval standards for annexations to the City of Ashland. The *Ashland Comprehensive Plan* goals and policies related to annexations are unchanged. In addition, the planning process is established as a legislative decision in AMC 18.5.1 General Review Procedures and no amendments to the planning process for annexations are proposed. This Goal is met.

GOAL 3: AGRICULATURAL LANDS

To preserve and maintain agricultural lands.

Finding: Not applicable because the proposal does not propose any land use regulation changes to agricultural lands outside of the Ashland UGB.

GOAL 4: FOREST LANDS

To conserve forest lands by maintaining the forest land base and to protect the state’s forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

Finding: Not applicable because the proposal does not propose any land use regulation changes to forest lands outside of the Ashland UGB.

GOAL 5: NATURAL RESOURCES, SCENIC AND HISTORIC AREAS, AND OPEN SPACES

To protect natural resources and conserve scenic and historic areas and open spaces.

Finding: The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 5. This Goal is met.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

To maintain and improve the quality of the air, water and land resources of the state.

Finding: The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 6. This Goal is met.

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

To protect people and property from natural hazards.

Finding: The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 7. This Goal is met.

GOAL 8: RECREATIONAL NEEDS

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.

Finding: The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 8 and recreational needs. This Goal is met.

GOAL 9: ECONOMIC DEVELOPMENT

To provide adequate opportunities throughout the state for a variety of economic activities vital to health, welfare, and prosperity of Oregon's citizens.

Finding: The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 9. This Goal is met.

GOAL 10: HOUSING

To provide for the housing needs of citizens of the state.

Finding: The procedure for annexation of land into a city is governed by ORS 222.120. The section establishes that after holding a public hearing with proper notice, the decision on whether to annex contiguous territory into a city is a decision of the legislative body. As a legislative decision, the legislative body has complete discretion on whether or not to include a contiguous land area within the city limits. Whether the comprehensive plan designation of an annexed land area is residential or non-residential, the requirement for clear and objective standards, conditions and procedures regulating the development of housing, including needed housing in 197.307(4) do not apply to the legislative decision to annex contiguous land area.

The amendments to the annexation standards in AMC Chapter 18.5.8 Annexations include a requirement to submit a concurrent application for development of the annexed

Findings of Fact and Conclusions of Law Page 6

area. While an annexation application and development proposal for the annexed land area will be processed concurrently, any proposals for development will be required to undergo the applicable quasi-judicial review process established in AMC Chapter 18.5.1 General Review Procedures. No changes are proposed to the established review procedures and approval criteria for housing development in AMC Part 18.5 Application Review Procedures and Approval Criteria.

The Statewide Planning Program requires each city to inventory its buildable residential lands, project future housing needs, and provide the appropriate types and amounts of land within the UGB necessary to meet those needs. The Housing Element of the *Ashland Comprehensive Plan* was amended and acknowledged in 2019. The City of Ashland has an acknowledged Housing Capacity Analysis (2021) and Buildable Lands Inventory (2019) which provide a factual basis for needed housing types and available land supply. The City has acknowledged zoning standards relating to residential development including provisions for housing density, setbacks, parking requirements, lot coverage, types, and development in environmentally or physically constrained areas. The amendments to AMC Chapter 18.5.8 Annexations do not amend existing zoning standards that apply to housing development.

Furthermore, the amendments to AMC Chapter 18.5.8 Annexations do not decrease or increase the density of housing, and do not decrease or increase building height of housing that can be developed on land that is annexed from within the UGB.

The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposed amendments do not modify the existing goals and policies related to Goal 10, nor do the amendments modify the *Ashland Comprehensive Plan* designations for area within the Ashland UGB. In addition, the amendments do not include any changes of the acknowledged zoning standards for residential development. This Goal is met.

GOAL 11: PUBLIC FACILITIES AND SERVICES

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.

Finding: Existing water and sewer infrastructure and treatment facilities will not be affected by the adopt of the amendments to Chapter 18.58 Annexations. The proposed amendments to the approval standards clarify the improvements required for water, sewer and storm drainage bordering and within an annexed area. The City of Ashland has master plans in place for water, wastewater and stormwater that address project population growth in the Ashland city limits and UGB. The Water Master Plan was completed in 2020 and projects and plans for an adequate water supply for a 20-year planning period. The Wastewater Master Plan was completed in 2012 and projects and plans for an adequate water supply for a 20-year planning period. The Stormwater and Drainage Master Plan was completed in 2020 and projects and plans for an adequate water supply for a 20-year planning period. This Goal is met.

GOAL 12: TRANSPORTATION

To provide and encourage a safe, convenient and economic transportation system.

Finding: The amendments to Chapter 18.58 Annexations are consistent with the *Ashland Comprehensive Plan* and adopted and acknowledged Transportation System Plan (2013). The transportation system is planned to accommodate the population growth of the community for the 20-year planning period. The proposed amendments to the approval standards clarify the improvements required for the transportation system bordering and within an annexed area, as well as safe and accessible bicycle and pedestrian facilities according to the safety analysis and standards of the governing jurisdiction of the facility or facilities. This Goal is met.

GOAL 13: ENERGY CONSERVATION

To conserve energy.

Finding: The City of Ashland has an acknowledged comprehensive plan that complies with this goal and the proposal does not modify the existing goals and policies related to Goal 5. This Goal is met.

GOAL 14: URBANZIATION

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.

Finding: The amendments to Chapter 18.5.8 Annexations improve the procedure for review of annexation applications by allowing the City Council to consider exceptions and variances to the annexation standards by using the same process and criteria that is in place for developments located within the city limits. In addition, the amendments clarify the improvements that are required to the transportation system and public utilities for an annexation. The extension of the transportation system and public utilities addresses the goal of orderly development of land that is annexed into the city limits. The amendments to AMC Chapter 18.5.8 Annexations do not decrease or increase the density of housing that can be developed within the UGB. The amendments facilitate the efficient use of land with the existing city limits and UGB to meet the projected population for Ashland. This Goal is met.

Statewide Planning Goal 15: “Willamette River Greenway” The affected areas are not located within or adjacent to the Willamette River Greenway. Therefore, Goal 15 is not applicable.

Statewide Planning Goal 16: ‘Estuarine Resources’ The affected areas are not located within the or adjacent to a designated estuarine resource. Therefore, Goal 16 is not applicable.

Statewide Planning Goal 17: “Coastal Shorelands” There are no coastal shorelands within the vicinity of Ashland, therefore, Goal 17 is not applicable.

Statewide Planning Goal 18: “Beaches & Dunes” There are no designated beaches or dunes within the vicinity of Ashland, therefore, Goal 18 is not applicable.

Statewide Planning Goal 19: “Ocean Resources” There are no designated ocean resources within the vicinity of Ashland, therefore, Goal 19 is not applicable.

D. Consistency with OAR Chapter 660 Division 14 Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands and ORS 222 City Boundary Changes; Mergers; Consolidations; Withdrawals

OAR Chapter 660, Division 14 Application of the Statewide Planning Goals to Newly Incorporated Cities, Annexation, and Urban Development on Rural Lands

660-014-0000

Purpose

ORS 197.175 requires cities and counties to exercise their planning and zoning responsibilities in compliance with the Statewide Planning Goals. This includes, but is not limited to, new or amended plans as a result of a city or special district boundary change including the incorporation or annexation of unincorporated territory. The purpose of this rule is to clarify the requirements of Goal 14 and to provide guidance to cities, counties and local government boundary commissions regarding urban development on rural lands, planning and zoning of newly incorporated cities, and the application of statewide goals during annexation proceedings.

660-014-0010

Application of the Statewide Planning Goals to Newly Incorporated Cities

(1) Incorporation of a new city within an acknowledged urban growth boundary does not require an exception to Goals 3, 4, 11, or 14. Incorporation of a new city within an acknowledged urban growth boundary must be consistent with relevant provisions of acknowledged city and county plans and land use regulations for the area to be incorporated.

(2) The following are land use decisions which must comply with applicable Statewide Planning Goals or the acknowledged comprehensive plan:

(a) A county order that authorizes an incorporation election pursuant to ORS 221.040;

(b) A resolution adopted by a city approving an incorporation within three miles of its city limits pursuant to ORS 221.031(4);

(c) An order adopted by a local government boundary commission authorizing incorporation of a new city pursuant to ORS 199.461. Incorporation decisions under this section include consolidations that include unincorporated lands.

(3) A city or county decision listed in subsection (2)(a) and (b) of this rule may also require a plan amendment. If the area proposed for incorporation is subject to an acknowledged comprehensive plan, the amendments shall be reviewed through the post acknowledgment plan amendment review process specified in ORS 197.610 to 197.650 and 197.757. If the area proposed for incorporation is not subject to an acknowledged

plan, a plan amendment is subject to review upon appeal as a "land use decision" as defined in ORS 197.015(10).

(4) A newly incorporated city must adopt a comprehensive plan and implementing ordinances for all land in its planning area. Cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged no later than four years after the date of incorporation or as extended in accordance with a compliance schedule adopted by the commission. Comprehensive plans prepared and adopted by newly incorporated cities shall be reviewed through the plan acknowledgment review process set forth in ORS 197.251 and OAR chapter 660, division 3.

Finding: The proposed land use code amendments do not involve a newly incorporated city. Ashland was incorporated in 1874. This OAR is not applicable.

660-014-0030

Rural Lands Irrevocably Committed to Urban Levels of Development

(1) A conclusion, supported by reasons and facts, that rural land is irrevocably committed to urban levels of development can satisfy the Goal 2 exceptions standard (e.g., that it is not appropriate to apply Goals 14's requirement prohibiting the establishment of urban uses on rural lands). If a conclusion that land is irrevocably committed to urban levels of development is supported, the four factors in Goal 2 and OAR 660-004-0020(2) need not be addressed.

(2) A decision that land has been built upon at urban densities or irrevocably committed to an urban level of development depends on the situation at the specific site. The exact nature and extent of the areas found to be irrevocably committed to urban levels of development shall be clearly set forth in the justification for the exception. The area proposed as land that is built upon at urban densities or irrevocably committed to an urban level of development must be shown on a map or otherwise described and keyed to the appropriate findings of fact.

(3) A decision that land is committed to urban levels of development shall be based on findings of fact, supported by substantial evidence in the record of the local proceeding, that address the following:

(a) Size and extent of commercial and industrial uses;

(b) Location, number and density of residential dwellings;

(c) Location of urban levels of facilities and services; including at least public water and sewer facilities; and

(d) Parcel sizes and ownership patterns.

(4) A conclusion that rural land is irrevocably committed to urban development shall be based on all of the factors listed in section (3) of this rule. The conclusion shall be supported by a statement of reasons explaining why the facts found support the conclusion that the land in question is committed to urban uses and urban level development rather than a rural level of development.

(5) More detailed findings and reasons must be provided to demonstrate that land is committed to urban development than would be required if the land is currently built upon at urban densities.

Finding: The proposed land use code amendments do not involve rural land as part of a Findings of Fact and Conclusions of Law

Goal 2 exception. Ashland's UGB was established and acknowledges in 1983, and no changes are proposed to the Ashland UGB. This OAR is not applicable.

660-014-0040

Establishment of New Urban Development on Undeveloped Rural Lands

(1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.

(2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.

(3) To approve an exception under section (2) of this rule, a county must also show:

(a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;

(b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:

(A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and

(B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.

(c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

(A) Whether urban development at the proposed site detracts from the ability of existing cities and service districts to provide services; and

(B) Whether the potential for continued resource management of land at present levels surrounding and nearby the site proposed for urban development is assured.

(d) That an appropriate level of public facilities and services are likely to be provided in a timely and efficient manner; and

(e) That establishment of an urban growth boundary for a newly incorporated city or establishment of new urban development on undeveloped rural land is coordinated with comprehensive plans of affected jurisdictions and consistent with plans that control the area proposed for new urban development.

(4) Counties are not required to justify an exception to Goal 14 in order to authorize industrial development, and accessory uses subordinate to the industrial development, in

buildings of any size and type, in exception areas that were planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

Finding: The proposed land use code amendments do not involve rural land outside of the Ashland UGB. This OAR is not applicable.

660-014-0060

Annexations of Lands Subject to an Acknowledged Comprehensive Plan

A city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) or 197.625 shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinances do not control the annexation.

Finding: The Ashland Comprehensive Plan and Title 18 Land Use do control annexations. The Ashland Comprehensive Plan is acknowledged. The amendments to Chapter 18.5. Annexations are consistent with the Ashland Comprehensive Plan and do not amend the Ashland Comprehensive Plan.

660-014-0070

Annexations of Lands not subject to an Acknowledged Comprehensive Plan

(1) All appropriate goals must be applied during annexation by the city. If the annexation is subject to the jurisdiction of a local government boundary commission, the boundary commission may utilize the findings of the city. The boundary commission, however, remains responsible for ensuring that the annexation is in conformance with the statewide goals.

(2) For the annexation of lands not subject to an acknowledged plan, the requirements of Goal 14 (Urbanization) shall be considered satisfied only if the city or local government boundary commission, after notice to the county and an opportunity for it to comment, finds that adequate public facilities and services can be reasonably made available; and:

(a) The lands are physically developed for urban uses or are within an area physically developed for urban uses; or

(b) The lands are clearly and demonstrably needed for an urban use prior to acknowledgment of the appropriate plan and circumstances exist which make it clear that the lands in question will be within an urban growth boundary when the boundary is adopted in accordance with the goals.

(3) Lands for which the findings in section (2) of this rule cannot be made shall not be annexed until acknowledgment of an urban growth boundary by the commission as part of the appropriate comprehensive plan.

Finding: The proposed amendments to the annexation standards implement the acknowledged Ashland Comprehensive Plan. This OAR does not apply.

660-014-0090

Establishment of Temporary Natural Disaster Related Sheltering on Undeveloped Rural Lands

(1) As used in this rule, “temporary natural disaster related sheltering” is limited to:
(a) Providing short-term refuge and life-sustaining services for disaster survivors who have been displaced from their homes and are unable to meet their own immediate post-disaster housing needs and is accomplished through use of fabric structures, tents and similar accommodations.

(b) Interim facilities that cover the gap between the natural hazard event and the return of disaster survivors to permanent housing provided through temporary modular structures, temporary manufactured housing or similar temporary accommodations for victims of the natural disaster.

(c) Temporary natural disaster related sheltering established pursuant to this rule may include parking facilities, walkways and access to water, toilet, shower, laundry, cooking, telephone, or other services either through separate or shared facilities.

(2) As used in this rule, “undeveloped rural land” has the meaning provided in OAR 660-014-0040(1).

(3) A county may justify an exception to Goal 14 to allow establishment of temporary natural disaster related housing on undeveloped rural land. The reason justifying why the policies in Goals 3, 4, 11 and 14 should not apply is that lands and structures within the area specified in the application have received damage from a wildfire identified in an Executive Order issued by the Governor in accordance with the Emergency Conflagration Act, ORS 476.510 through 476.610.

(4) To approve an exception under section (3) a county must also show:

(a) That Goal 2, Part II (c)(1) is met because:

(A) The applicant is a Tribe as defined in ORS 182.162(2) or a public agency, on behalf of the city, unincorporated community, rural residential exception area the temporary natural disaster related sheltering is primarily intended to assist. Any application made on behalf of a city must include a resolution of support adopted by that city’s elected leadership, or

(B) The applicant is a Tribe as defined in ORS 182.162(2) on behalf of its residents for areas that are subject to county land use jurisdiction; and

(C) The area specified in the application is within an area identified by an Executive Order issued by the Governor declaring an emergency for all or parts of Oregon pursuant to ORS 401.165, et seq.

(b) That Goal 2, Part II (c)(2) is met because:

(A) The city, unincorporated community, or rural residential exception area specified in the application has lost a significant amount of its housing inventory from a wildfire identified in an Executive Order issued by the Governor in accordance with ORS 476.510 through 476.610. For purposes of this paragraph, a significant loss of housing inventory means:

(i) At least 15 percent in a city’s urban growth boundary, an unincorporated community boundary, or a city or census designated place located within the sovereign territory of a Tribe; or

(ii) At least 60 percent on rural residential areas designated as exception lands or on lands within the sovereign territory of a Tribe but not located included in a city or census designated place.

(B) An application made on behalf of a city demonstrates that the city considered lands within its urban growth boundary and provided an explanation for why such lands could

not reasonably accommodate the temporary natural disaster related sheltering.

(c) That Goal 2, Part II (c)(3) is met because the proposed location is:

(A) Not included in a flood plain, flood way or other areas subject to natural hazards as inventoried in the county comprehensive plan or identified in applicable land use regulations.

(B) Not included in wildlife habitat inventoried in the county comprehensive plan.

(C) Not included on a property containing historical resources inventoried in the county comprehensive plan for purposes of protecting archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects.

(D) Within the urban reserve area of the city specified in the application, or, if no urban reserve area has been established, within one mile of the applicable urban growth boundary.

(E) Within two miles of the boundary of the unincorporated community specified in the application.

(F) Within two miles of the rural residential exception area specified in the application.

(G) Within two miles of the area within the sovereign territory of a Tribe specified in the application.

(H) If areas described in paragraphs (D), (E), (E) or (G) of this subsection are not available because they are under federal ownership or because damage caused by a wildfire identified in an Executive Order issued by the Governor in accordance with ORS 476.510 through 476.610 makes them unsuitable for development, the county may establish a different distance that is no further than necessary to accommodate the use.

(I) Within the same school district as the city, unincorporated community, or rural residential exception area specified in the application unless the county establishes a different distance under paragraph H) of this subsection, which necessarily makes such a location impossible.

(d) That Goal 2, Part II (c)(4) is met because the county has coordinated with effected governments and imposes the following conditions:

(A) Temporary natural disaster related sheltering is allowed for 36 months from the date of the Governor's emergency declaration. The county may grant two additional 12-month extensions upon a demonstration by the applicant that the temporary natural disaster sheltering housing remains necessary because permanent housing units replacing those lost to the natural hazard event are not available in sufficient quantities.

(B) The temporary natural disaster related sheltering, including any associated infrastructure, will be removed when it is no longer necessary. A plan for removing the temporary natural disaster related sheltering the end of the time-frame specified in paragraph (A) shall be included in the application materials and, upon meeting the county's satisfaction, be attached to the decision as a condition of approval. A county may require that a removal plan developed pursuant to this paragraph include a specific financial agreement in the form of a performance bond, letter of credit or other assurance acceptable to the county that is furnished by the applicant in an amount necessary to ensure that there are adequate funds available for removal activities to be completed.

(C) The project shall adhere to standards for the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural

patrimony and sacred objects, as provided in ORS 97.740 to 97.750 and 358.905 to 358.961.

(D) The property owner will sign and record in the deed records for the county a document binding the project owner and the project owner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices as defined in ORS 30.930(2) and (4).

(5) A proposal that is found to satisfy the requirements of this rule for an exception to Goal 14 is also deemed to satisfy the requirements of OAR chapter 660, divisions 4 and 11 for exceptions to Goals 3, 4, and 11.

(6) The use of the property for temporary natural disaster related sheltering shall not be a basis to justify a new exception pursuant to OAR chapter 660, divisions 4 or 14.

(7) Approval of a reasons exception under this rule shall be documented in the comprehensive plan and include a specific explanation that the reasons exception does not apply for a total period of longer than five years pursuant to paragraph (4)(d)(A).

(8) Approval of a reasons exception under this rule may not result in a change to the base zone of the subject property. The county must implement the exception by either:

(a) Application of an overlay zone that applies in addition to the base zone of the subject property. The overlay zone shall:

(A) Clearly specify what uses may occur under the exception, and

(B) Not apply for a total period longer than five years pursuant to paragraph (4)(d)(A);
or

(b) Application of comprehensive plan implementation measures consistent with Goal 2. The comprehensive plan provisions shall:

(A) Identify the property subject to the exception,

(B) Clearly specify what uses may occur under the exception, and

(C) Not apply for a total period longer than five years pursuant to paragraph (4)(d)(A).

(9) Reasons exceptions adopted under this rule qualify for the exemption to notice of a proposed change to a comprehensive plan or land use regulation identified at OAR 660-018-0022(2).

(10) A reasons exception taken under this rule for lands planned and zoned for resource use under Goals 3 or 4, or both does not elevate the priority of such lands for inclusion in an urban growth boundary for purposes of ORS 197A.320(2)(c)(A) or ORS 197.298.

Finding: The proposed amendments do not involve temporary natural disaster related sheltering or a Goal 14 exception. This OAR does not apply.

ORS 222 — City Boundary Changes; Mergers; Consolidations; Withdrawals

The proposed amendments are consistent with the requirements of ORS Chapter 222 because the amendments don't change any annexation requirements or the required review process that is inconsistent with the statute. The proposed amendments are also consistent with the Ashland Municipal Charter and do not make changes that would affect entities that provide urban services to areas within the Ashland UGB. Much of ORS Chapter 222 addresses the procedures that occur after the City Council approves an annexation such as recording a signed consent to annex, taxation, special districts and notification of the Secretary of State. The proposed amendments are limited to the

annexation application review process and standards at the local level which do not affect the required process after an annexation is approved.

Finding: The proposed amendments meet the applicable requirements of ORS 222.

OVERALL COUNCIL CONCLUSIONS

The City Council finds and determines the approval criteria for this decision have been fully met, based on the detailed findings set forth herein, the detailed findings and analysis of the Planning Commission, and supporting documents together with all staff reports, addenda and supporting materials in the whole record.

Specifically, the Council finds that the proposed land use code amendments are consistent with City of Ashland approval criteria for land use ordinance and zoning map amendments as set forth in ALUO 18.5.9.020.B and are consistent with the City of *Ashland Comprehensive Plan* and other City policies. The Council finds and determines that the proposed amendments are consistent the Oregon Statewide Planning Goals, OAR Chapter 660 Division 14 and ORS Chapter 222.

Accordingly, based on the above Findings of Fact and Conclusions of Law, and based upon the evidence in the whole record, the City Council hereby APPROVES the ADOPTION of the following amendments to AMC Title 18 Land Use as reflected in the attached ordinance.

Ashland City Council Approval

Julie Akins, Mayor

Date

Signature authorized and approved by the full Council this 21st day of December, 2021.

Attest:

Melissa Huhtala, City Recorder

Date

Approved as to form:

Katrina Brown, City Attorney

Date