

# Title 19: ZONING, ANNEXATIONS, URBAN GROWTH MANAGEMENT

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## **16.04.010 TITLE**

The ordinance codified in Title 16 shall be known as the "LAND USE PROCEDURES ORDINANCE" and may be so cited and pled.

## Chapter 18.92: Zone Changes

SECTION	HEADING	PG
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### **19.92.050 APPROVAL REQUIREMENTS**

A zone change may be allowed after a hearing conducted pursuant to the Type IV land use procedures of this Code, provided that the applicant provides evidence substantiating the following, unless otherwise provided for in this title:

1. Approval of the request is consistent with the Comprehensive Plan.
2. The area in which the zone change is proposed will be adequately served by existing or planned transportation, water, sewer and storm drainage systems, and any projected increased demand for other types of public facilities or services can be met within a reasonable time.
3. All zone changes shall conform to the Transportation System Plan. Proposed amendments shall not substantially impact the functional classification or operation of transportation facilities.

### **19.92.100 PLAN AMENDMENT**

If a plan amendment is required as a result of the proposed zone change, the plan amendment shall be processed at the same time as the zone change.

## Chapter 19.94: Annexations and Boundary Changes

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### **19.94.010 PURPOSE**

1. The purpose and general intent of the ordinance codified in this chapter is to delineate the appropriate procedures to be followed to annex territory to the City.
2. The City recognizes that annexations are major land use actions affecting all aspects of City Government.
3. The procedures and standards established in this chapter are required for review of proposed annexations in order to:
  - A. Encourage development of properties already within the City limits before conversion of urbanizable areas.
  - B. Avoid creating islands of unincorporated territory within the corporate limits of the City.
  - C. Provide adequate public information and sufficient time for public review before an annexation hearing.
  - D. Establish a system for measuring the physical, environmental, fiscal and related social effects of proposed annexations.
  - E. Ensure adequate time for staff review.
4. With respect to boundary changes or extensions of services other than annexations, the purpose and general intent of this chapter is to provide a method by which such changes or extensions may be reviewed in a rational way and in accordance with the Comprehensive Plan.
5. The regulations and requirements of ORS 222 are concurrent obligations for annexation and are not affected by the provisions of this chapter.

## 19.94.020 ANNEXATION APPLICATION

1. Annexations of territory shall be accomplished by any method allowable under ORS Chapter 222, as now enacted or hereafter amended, or by any other method allowable under Oregon law.
2. Applications shall be submitted on forms provided by the City, and shall be processed under a Type IV land use procedure.
3. The City Council shall establish the filing fee for such applications by resolution.
4. Prior to submitting an annexation application, the applicant shall confer with the Planning Director in the manner described in MMC section 16.06.210.
5. Signatures on Consent Form and Application.
  - A. The applicant shall sign the consent form and the application for annexation.
  - B. If the applicant is not the owner of the property proposed for annexation the owner shall sign the consent form and application in writing before the Planning Director may accept the application.
  - C. Written consent form to the annexation signed by the requisite number of affected property owners, electors or both, provided by ORS 222, if applicable.
6. Zone Change
  - A. Applications for annexations of territory shall be accompanied by an application for a zone change in order to apply a City zoning designation to the territory to be annexed.
  - B. Such application for a zone change shall be processed with the application for annexation by consolidated application.
7. Contents of Application
  - A. An applicant seeking to change a boundary or annex land to the City shall file with the Planning Director the appropriate application form.
  - B. The application shall include the following.
    - 1) The statutory authority under which the application is filed.
    - 2) A legal description of the territory to be annexed, meeting the relevant requirements of ORS Chapter 308. Descriptions by reference to tax lot numbers are not permitted.
      - a. A boundary survey may be required if in the Planning Director's discretion is determined to be necessary.
      - b. A lot and block description may be substituted for the metes and bounds description if the area is platted.
      - c. If the legal description contains any deed or book and page references, legible copies of these shall be submitted with the legal description.

- d. The applicant shall sign a consent form requiring a new legal description to be provided to the Planning Department within three (3) months. If upon filing with the Department of Revenue a legal description shall be paid for by the applicant. Failure to provide a legal description within three (3) months shall be cause for the annexation to be reversed and removed from the City's inventory.
- 3) Two (2) full quarter-section county tax assessor's maps, with the subject property(ies) outlined.
  - 4) Twenty one (21) copies of a site plan, drawn to scale (not greater than one (1) inch = fifty (50) feet), indicating:
    - a. The location of existing structures (if any).
    - b. The location of streets, sewer, water, electric and other utilities, on or adjacent to the property to be annexed.
    - c. The location and direction of all water features on and abutting the subject property.
    - d. Approximate location of areas subject to inundation, stormwater overflow or standing water.
    - e. Base flood data showing elevations of all property subject to inundation in the event of 100 year flood shall be shown.
    - f. Natural features, such as rock outcroppings, marshes or wetlands, wooded areas, slide areas, slopes exceeding forty-five (45) degrees and significant areas of vegetation.
    - g. General land use plan indicating the types and intensities of the proposed or potential development.
    - h. The current tax assessed value of all property within the affected territory.
    - i. A narrative statement explaining the conditions surrounding the proposal and addressing the factors contained in the ordinance codified in this chapter.
      - i. Statement of availability, capacity and status of existing water, sewer, drainage, transportation, park and school facilities, and any other urban services including a listing of the present urban services providers in the affected territory.
      - ii. Statement of increased demand for such facilities to be generated by the proposed development, if any further demand is required at this time.
      - iii. Statement of additional facilities, if any, required to meet increased demand, any proposed phasing of such facilities in accordance with projected demand and a list of all proposed urban service providers.
      - iv. Statement outlining the method and source of financing required to provide additional facilities if required.

- v. Statement of overall development theme and methods by which the physical and related social environment of the site, surrounding area and community will be enhanced.
- vi. Statement of potential physical, aesthetic, and related social effects of the proposed, or potential development on the community as a whole and on the small sub-community or neighborhood of which it will become a part; and proposed actions to mitigate such negative effects if required.
- vii. Statement indicating the type and nature of any Comprehensive Plan text or map amendments, or zoning text or map amendments that may be required to complete the proposed development.
- j. Any other information required by State law.

**19.94.100 ANNEXATION CRITERIA**

The City Council may approve an application for annexation to the City of Molalla if the following criteria are met:

1. The territory to be annexed is within the Urban Growth Boundary of the City of Molalla.
2. The application complies with all requirements of State law.
3. The territory to be annexed is contiguous to the City or separated from it only by a public right-of-way or a stream, lake or other body of water.
4. Adequate access exists to the site.
5. Adequate public facilities and services will be available to serve the territory, and they can be made available in an orderly and economical fashion.
6. The annexation will not result in significant adverse impacts on specially designated open spaces, or designated scenic, historic or natural resource areas.
7. The size of the territory to be annexed is of adequate dimension so as to maximize the utility of the land resource and to enable the logical and efficient extension of services to that territory.
8. The application satisfies any applicable goals and policies of the City's Comprehensive Plan.

**19.94.200 ANNEXATION PROCEDURES**

1. The City's written decision shall state the rationale used in justifying the decision, and demonstrate conformance with the City's Comprehensive Plan.
2. For all annexations the decision shall state how the proposal will:
  - A. Conform to the City's Comprehensive Plan.

- B. Affect the community's air resources.
- C. Promote an orderly, timely and economical transition of rural and agricultural lands into urbanized lands.
- D. Relate to areas with natural hazards.
- E. Affect fish and wildlife in the proposed annexation.
- F. Utilize energy resources and conserve energy use.
- G. Protect open spaces and scenic views and areas.
- H. Provide for transportation needs in a safe, orderly and economic manner.
- I. Provide for an adequate, orderly and efficient arrangement of public services.
- J. Provide for the recreation needs of the citizens.
- K. Affect identified historical sites and structures and provide for the preservation of such sites and structures.
- L. Improve and enhance the economy of the City.
- M. Not have any adverse effects on the economic, social and physical environment of the community by the overall impact of the annexation.
- N. Provide quality, safe housing through a variety of housing types and price ranges.

**19.94.300 EFFECTIVE DATE OF ANNEXATION**

1. Upon approval of the annexation, the City Council shall set the final boundaries of the territory to be annexed by ordinance. The Planning Director shall then provide notice of the annexation approval to all persons and entities entitled to such notice pursuant to ORS 222.
2. The annexation shall be complete from the date of filing with the Secretary of State as provided in ORS 222.150, 222.160, 222.170, and 111.900.
3. Thereafter, the annexed territory shall be and remain part of the City.
4. The date of such filing shall be the effective date of annexation, provided such filing is not made later than ninety (90) days prior to any general or primary election; otherwise, the effective date of such annexation shall be the day after the primary or general election next following the date of filing.
5. The City Council shall establish the zoning district upon annexation of the property to the City in accordance with the Comprehensive Plan.

**19.94.400 WITHDRAWALS OF TERRITORY**

The City Council may, on its own motion, order the withdrawal of territory from the City as provided in ORS Chapter 222, as now enacted or hereafter amended, or by any other method allowable under Oregon law.

## Chapter 19.96: Urban Growth Management

<b>SECTION</b>	<b>HEADING</b>	<b>PG</b>
19.96.010	PURPOSE	
19.96.020	DEVELOPMENT PERMITS FOR AREAS NOT FULLY MASTER PLANNED	
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19.96.040	STANDARDS FOR STREET IMPROVEMENTS	
19.96.050	STANDARDS FOR SEWER, WATER, & STORM IMPROVEMENTS	
19.96.080	STANDARDS FOR PARK SITES	
19.96.090	DETERMINATION OF EXTENT OF REQUIRED IMPROVEMENT	
19.96.100	CERTIFICATION OF COSTS BY DEVELOPER	
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19.96.130	AMENDMENT OF PRELIMINARY DECLARATION OR PERMIT	

## **19.96.010 PURPOSE**

This Chapter creates an urban growth management program for the City of Molalla. In order to direct, control, and accommodate the growth of the city within the Urban Growth Boundary, and to ensure compliance with the urban growth policies of the Molalla Area Comprehensive Plan, it is the intent and purpose of this chapter to provide for implementation of the following themes:

1. Growth creates a demand for new facilities and services, and because of widespread public reluctance to accept continual increases in the cost of local government, an increased share of the costs of growth should be funded through System Development Charges (SDCs) collected from that growth. A flexible Urban Reserve Area should be established and should be adjusted periodically to ensure that land is made available for development in sufficient amounts to maintain an adequate supply in the marketplace. A continuous twenty (20) year supply of serviced, developable land should be maintained to avoid unnecessary increases in land prices created by artificial shortages of land.
2. The city should construct required facilities to serve growth in a timely, orderly and economically efficient manner consistent with facility master plans, the Capital Improvements Plan and available funding. Bonding may be used initially to fund construction of needed facilities to support additions to the Urban Reserve Area. The City has full discretion in allocating funds through the Capital Improvements Plan. These decisions will determine whether expansions to the Urban Service Area may be feasible. SDCs may be used to retire the bonds.
3. Growth could occur anywhere in the City within the Urban Growth Boundary, if that growth provides and pays for the required facilities. The urban growth management program also addresses those circumstances where the developer desires to construct the required facilities in the Planning Area or proposes development outside the Urban Service Area.
4. The growth management program requirements and procedures apply to land brought into the Urban Reserve Area and to land lying within the Urban Growth Area.

Development subject to this chapter includes residential, commercial, retail, and industrial development.

## **19.96.200 STANDARDS FOR STREET IMPROVEMENTS**

1. The Planning Director shall require that a proposed development be linked by construction of and improvements to public streets which shall extend from the development to an adequate street or streets by the shortest preplanned routes available. Specific locations and classifications of such linking streets shall be based upon the street network adopted in the Transportation Systems Plan.
2. Within the boundaries of the property on which development is to occur, all streets shall be fully improved. All streets abutting the property boundaries shall be designed and improved by the developer to the greater of the standards specified in this Code and the standards for linking streets in this section.
3. Standards for geometric design, construction, and materials shall be as specified for the appropriate classification of street, arterial, collector, or local, as contained in the standards and specifications on file in the office of the Director of Public Works.

### **19.96.220 STANDARDS FOR SEWER, WATER, AND STORM IMPROVEMENTS**

The Hearing Body shall require that the proposed development be linked to existing adequate facilities, by the construction of sewer lines and pumping stations, which are necessary to connect to such existing sewer facilities. The specific location, size and capacity of such facilities will be determined with reference to any one or combination of the following:

1. Sewer Master Plan.
2. Specific engineering capacity studies approved by the Director of Public Works. With respect to facilities not shown in the master plan but necessary to link to adequate facilities, the location, size and capacity of such facilities to be constructed or linked shall be determined by the Planning Director. Temporary sewer facilities, including pumping stations, will be permitted only if the temporary facilities include all facilities necessary for transition to permanent facilities, and are approved by the Director of Public Works. Design, construction, and material standards shall be as specified by the Director of Public Works for the construction of all such public sewer facilities in the City.
3. The stormwater Management Plan or, upon adoption, a superseding Stormwater Master Plan.
4. The Water Master Plan

### **19.96.240 STANDARDS FOR PARK SITES**

1. The Planning Commission shall require that an applicant for a UGA Development Permit reserve for dedication, prior to development approval, property within the development site necessary for adequate neighborhood parks, access to such parks, and recreation routes, or similar uninterrupted linkages.
2. For purposes of this section, an adequate neighborhood park site is one that meets the Level of Service (LOS) of 1.25 acres per 100 residents.

### **19.96.300 ACQUISITION OF RIGHTS-OF-WAY EASEMENTS AND PROPERTY**

1. It is the responsibility of the developer to obtain all necessary rights-of-way for street improvements specified in this code, easements for sewer, drainage and water lines, and fee title to property for parks, pumping stations and reservoirs to complete all conditions of the UGA Development Permit. In the event the developer is unable to acquire any necessary title, easement or right-of-way after documented good faith attempts to negotiate and purchase the same, he shall prepare the legal descriptions thereof and transmit them to the City Attorney. The City Attorney shall refer the matter to the City Council which shall, after public hearing, proceed to determine whether to acquire such easements through exercise of the City's power of eminent domain as though the public improvement were to be funded by the City.
2. The City Attorney and other involved city departments shall keep account of time and expenses incurred in acquiring the title, rights-of-way and easements, including the amount of court costs and attorney fees awarded the other party by the court. The developer shall pay all such

expenses together with the amount of the judgment or settlement as a condition of the URA Development Permit. In instances where the City and a developer have responsibility for acquiring abutting portions of street right-of-way at the same time, the administrative and legal expenses delineated in this subsection shall be shared in proportion to the acreage acquired by each party.

3. Any settlement of a condemnation action must be concurred by the developer; however the developer shall accept and be bound by a final judgment rendered in such action unless, within ten (10) days of the verdict being rendered, he notifies the City Attorney, in writing, of his intention to abandon the development. In the event he, at any time, decides to abandon the development, the developer shall pay to the City all costs incurred in preparing for and prosecuting the action, including costs and attorney fees awarded the defendant in the action.
4. All rights-of-way, easements and titles to property acquired by the developer shall be deeded or dedicated, free of all liens and encumbrances, to the City prior to commencement of any construction of required facilities.
5. Park sites shall be dedicated to the city as a Condition of final plat approval.

#### **19.96.350 DETERMINATION OF EXTENT OF REQUIRED IMPROVEMENT**

1. To the extent that they have not already been provided, a development shall provide the following facilities, located and constructed as determined by this code:
  - A. All major linear and area facilities that serve the development.
  - B. All major linear and area linking facilities.
  - C. Minor facilities necessary to link the development to the major facilities.
  - D. All major and minor facilities abutting or within the development parcel, including the construction of any major facility that falls within 260 feet of the boundaries of the development parcel, measured at right angles to the length of the facility.
  - E. Parks facilities as specified in this Code, to the extent those facilities have not been provided by the public.
2. Water, storm drainage, streets and sewer facilities need not, in all cases, link to the same locations. Water, storm drainage, streets and sewer facilities shall be provided as necessary to link the development to a point where existing water, storm drainage, streets and sewer service facilities are adequate, along the shortest preplanned route.
3. Water facilities shall conform with existing City service levels and shall be looped where necessary to provide adequate pressure during peak demand at every point within the system in the development to which the water facilities will be connected.
4. Where two (2) facilities must be built to their point of intersection, the entire intersection shall be built as well.

5. All facilities constructed as required in this section shall be and become the property of the City upon final acceptance of the work.
6. The developer, at the developer's expense, shall extend necessary services to the property line as determined by the Director of Public Works.

#### **19.96.370 CERTIFICATION OF COSTS BY DEVELOPER**

1. Where a major facility or minor off-site facility is provided by a developer as required by this chapter, for which SDC credits may be available, the developer shall, within thirty (30) days of City acceptance of the facility, prepare a sworn statement of all allowable costs incurred in the construction, and submit the same, together with proof of payment thereof, to the Director of Public Works. The Director of Public Works may require the developer to provide additional documentation prior to certification by the city.
2. "Allowable costs" include:
  - A. The actual price paid to an independent contractor or contractors for the construction of the facility or any part thereof.
  - B. The cost of labor and materials plus 15% thereof for the work performed by the developer directly.
  - C. The actual cost charged by an independent engineer or engineers for the design of the facility or any part thereof, or for supervision or inspection of its construction.
  - D. The amount of wages or salary paid plus 15% thereof, based on actual hours worked by engineers and draftsmen and other technicians who are directly employed by the developer for the design of the facility or any party thereof or for supervision or inspection of the construction.
  - E. The actual cost of independent tests performed in aid of design of the facility, or to determine whether the materials and workmanship employed in the construction are within the approved specifications.
  - F. The actual price paid to an independent surveyor for establishing lines, locations and grades (construction staking) for construction of the facility or to establish property lines, rights-of-way and easements for acquisition of property interests necessary to the facility.
  - G. The amount of wages or salary paid, plus the cost of materials, plus 15% thereof based on the actual hours worked by surveyors and their assistants who are employed by the developer for establishing lines, locations and grades (construction staking) for construction of the facility or to establish property lines, rights-of-way and easements for acquisition of property interests necessary to the facility.
  - H. The costs of acquiring real property interests for the facility, escrow fees and fees related to litigation charged by the City Attorney and other involved City departments pursuant to this code.

- I. The fair market value of real property within the development that is reserved for dedication to the City for public park use.
3. "Allowable costs" do not include developer's personal oversight or superintendence of the project, unless the developer is also the contractor, or interest or finance charges on money borrowed to finance the project.

#### **19.96.380 CERTIFICATION OF COSTS BY CITY**

Upon completion and final acceptance of a major or minor facility built with public funds, including right-of-way or easement acquisition costs, where the cost thereof is not to be assessed against benefitted property through the normal assessment procedure, the Director of Public Works shall certify the allowable costs thereof to the Finance Director. "Allowable costs" include all costs which are allowable under this Code.

#### **19.96.390 SDC REIMBURSEMENTS**

1. A developer who provides a major facility on or off-site, or a minor off-site facility, exclusive of temporary sewage lift stations, temporary water pumping stations, temporary storm drainage facilities, and temporary water reservoirs, shall be eligible for credits as set forth in this Code, and reimbursements in excess of credits for their allowable costs as provided in this section.
  - A. Where the development permit requires the construction of such facilities and they are specified as eligible facilities in the improvement agreement provided in (2) of this section. No reimbursement shall be given for the cost of that portion of any water or sewer lines, eight (8) inches or less, or any storm drainage line twelve (12) inches or less, where lots representing 25% or more of the front footage take service from said lines, nor shall any reimbursement be given for any facility built larger than the above minimums if such capacity is needed by the development itself.
  - B. Subject to budgetary appropriation, reimbursement in excess of the credits provided for in (1.A) of this section is payable to any developer of an eligible facility within the USA and listed in the CIP as a publicly-funded improvement. Such reimbursement shall include interest on the certified allowable costs based on the City's bond rate of interest at the date of acceptance by the City, or the City's investment rate, whichever is lower. Reimbursement under this paragraph is limited to fifteen (15) years from the time that the facility is accepted by the City.
  - C. Development outside of the Urban Growth Boundary shall install all master plan facilities as required by its Preliminary Declaration at the developer's own expense. Subject to budgetary appropriation, reimbursement in excess of the credits provided for in (1.B) of this subsection for such facilities shall not occur until the area is included into the Urban Growth Boundary. Reimbursement under this paragraph is limited to fifteen (15) years from the time that the facilities are accepted by the City. The amount of reimbursement shall be based on the least public cost for an Urban Growth Boundary addition calculated at the time of the improvement agreement or the certified allowable costs, whichever is less. Reimbursement

under this paragraph shall not include a return on investment, but shall be annually adjusted (indexed) for inflation using the Engineering News Record (ENR) index approved by City Council for the methodologies for the facilities.

- D. In no event shall a developer be reimbursed in an amount that exceeds the developer's allowable costs plus interest or indexing as specified in (1.B) and (1.C) above, less any system development charge credits allowed under this Code, City adopted budget project expenditures, and any connection fees credited as determined by this code.
2. There shall be assessed against the developer an administrative fee for determining certified allowable costs and processing reimbursements in an amount established by resolution of the City Council.

#### **19.96.400 AMENDMENT OF PRELIMINARY DECLARATION OR PERMIT**

1. An application for an amendment to an existing Preliminary Declaration or Permit, along with an application fee established by City Council, may be filed by the applicant or its successors in interest. The information to be supplied shall include that required under this Code, if different from the initial submittal, and shall include evidence of compliance with the amendment criteria set out below.
2. The Hearing Body shall review amendment proposals under the process set out in this Code and may either grant, grant with conditions, or deny the amendment proposal. Appeals from the Hearing Body decision shall go to the council and be filed and processed under this Code. Additional notice shall be sent to all parties involved in the initial grant of the declaration or permit.
3. Application for an amendment does not terminate the existing Preliminary Declaration or Permit until the effective date of the Amended Preliminary Declaration or Permit. The application may be withdrawn within ten (10) days of the effective date of the Amended Preliminary Declaration or Permit.
4. Criteria
  - A. A significant change in the circumstances must have occurred has the effect of making the originally required public facilities inappropriate or inadequate. A “significant change in circumstances” includes but is not limited to a change in the adopted master plan, or area facility plan for the area which changes the nature of the required public facilities, a change in the nature of the proposed development which significantly changes the demands on the public system, or changes the nature or location of the facilities, a change in the timing or phasing of the development that leads to a need to change the approved phasing sequence of the public facilities, or a change in technology or engineering practices that results in a better or more efficient delivery of public services or development of the public facility.
  - B. The change is of such magnitude that it cannot be accommodated administratively.

- C. The proposed amendment does not simply reduce the developer's costs by shifting them to another developer or the public, unless the benefits received by such other developer and the public are significantly increased.
  - D. The proposed amendment conforms to all requirements of the Urban Growth Management program in effect at the time the amendment is processed.
  - E. The burden of proof is on the developer proposing the amendment to demonstrate compliance with all applicable criteria.
5. Notwithstanding subsection (4.D) above, facilities that are not the subject of the amendment but that would be required under master, or area facility plans, adopted or amended after the issuance of the permit or declaration and which have the effect of increasing the applicant's costs, shall not be imposed on the applicant without applicant's consent.