



## **EXHIBIT 4 – STAFF REPORT**

DATE: September 16, 2021  
TO: McMinnville Planning Commission  
FROM: Heather Richards, Planning Director  
SUBJECT: G 3-21, Annexations

### STRATEGIC PRIORITY & GOAL:



### **GROWTH & DEVELOPMENT CHARACTER**

Guide growth & development strategically, responsively & responsibly to enhance our unique character.

**OBJECTIVE/S:** Strategically plan for short and long-term growth and development that will create enduring value for the community

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### Report in Brief:

This is a public hearing to consider proposed amendments to the McMinnville Comprehensive Plan, Volume II, Goals and Policies, Chapter IX, "Urbanization", and the McMinnville Municipal Code, Title 16 and Title 17 establishing amended requirements and procedures for annexation of lands to the City of McMinnville for compliance with the McMinnville Growth Management and Urbanization Plan (MGMUP) and ORS 222, which governs annexations of land into cities in Oregon. (Docket 3-21).

### Background:

Annexation is the process by which a municipality, upon meeting certain requirements, expands its corporate limits.

Oregon statewide planning goals require that each city be surrounded by a boundary which is called an urban growth boundary (UGB). The UGB defines the area which the city has identified as being eligible to be included within the city limits during a 20-year planning period to accommodate growth. Annexation is the process for lands within the UGB to become part of the city limits, and thus developed to an urban intensity in

compliance with the city’s comprehensive plan. Lands within the UGB may be considered for annexation into the city limits consistent with ORS 222 and local ordinances. Annexations are governed by state laws (Oregon Revised Statute, Title 21, Chapter 222), City Charters, and local ordinances.

A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed. The boundaries of a city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water, if the proposal for annexation is approved in the manner provided by the city charter or by ORS 222.111.

Historically in McMinnville, annexations have been governed by Ordinances No. 4130, 4357, 4535, 4624, 4636, and 4670. All of which developed and amended an annexation process for the City of McMinnville over the past forty (40) years. The history of the amendments to these ordinances is nuanced and difficult to administer. (Please see Table 1 below).

Staff is recommending repealing all of these Ordinances and dedicating a chapter of the McMinnville Municipal Code (Chapter 16) to Annexations for transparency and ease of administration.

| Ordinance | Date of Approval | What it does?   |
|-----------|------------------|---|
| No. 4130  | April 7, 1981    | <ul style="list-style-type: none"> <li>• Enacted requirements and procedures for annexation of land to the City of McMinnville.</li> <li>• Land must be in the UGB.</li> <li>• Land must be contiguous to the city limits.</li> <li>• Plan for development must meet comprehensive plan policies.</li> <li>• Adequate level of services must be available or made available within three years of annexation.</li> <li>• Public hearing at the Planning Commission level. PC provides a recommendation to City Council.</li> <li>• City Council public hearing and final decision.</li> <li>• City shall attempt to not create islands of non-incorporated territory within the city limits.</li> <li>• If an island is created, it needs be annexed within one year.</li> <li>• Zoning shall be AH or county zoning until it is rezoned into a city zone for development.</li> </ul> |

| Ordinance | Date of Approval  | What it does?  |
|-----------|-------------------|--|
| No. 4357  | February 4, 1986  | <ul style="list-style-type: none"> <li>• Repeals Ordinance No. 4130.</li> <li>• In response to state changes to ORS 222, which no longer required two public hearings if all the property owners of the land to be annexed consent to the annexation.</li> <li>• City elected to retain a public hearing for annexations at the Planning Commission level and eliminate the one required at the City Council level.</li> <li>• Land still must be in the UGB.</li> <li>• Land still must be contiguous to city limits.</li> <li>• Plan for development must meet comprehensive plan policies.</li> <li>• Adequate level of services must be available or made available within three years of annexation.</li> <li>• Public hearing at the Planning Commission level. PC provides a recommendation to City Council.</li> <li>• City Council public hearing and final decision.</li> <li>• City shall attempt to not create islands of non-incorporated territory within the city limits.</li> <li>• If an island is created, it needs be annexed within one year.</li> <li>• Zoning shall be AH or county zoning until it is rezoned into a city zone for development</li> </ul> |
| No. 4535  | April 27, 1993    | <ul style="list-style-type: none"> <li>• Amends Ordinance No. 4357 due to state amendments to ORS 222 relative to nonunanimous consent of property owners to be annexed.</li> </ul>  |
| No. 4624  | May 14, 1996      | <ul style="list-style-type: none"> <li>• Amends Ordinance No. 4357 to require that Islands created by annexations be annexed into the city within one year.</li> </ul>   |
| No. 4636  | November 12, 1996 | <ul style="list-style-type: none"> <li>• Repeals Ordinance No. 4357 in response to local ballot measure No. 36-32 passed on May 21, 1996 to amend the City Charter to read that all annexations except those otherwise mandated by state law, be referred to a vote of the electorate.</li> </ul>  |
| No 4670   | June 23, 1998     | <ul style="list-style-type: none"> <li>• Amends Ordinance No. 4636 relative to the definition of adequate levels of municipal sanitary sewer and water service required within three years of annexation.</li> </ul>   |

The most recent ordinance passed relative to annexations is Ordinance No. 4636, which provides for the following:

All annexations must be:

- Within the UGB
- Contiguous to the city limits
- Complies with the Comprehensive Plan, Volume II, Goals and Policies
- Must have an adequate level of urban services available or made available, within three years time of annexation.
- Findings documenting the availability of police, fire, and school facilities and services shall be made to allow for the proposed annexation.
- Public hearing with the Planning Commission for recommendation of approval to City Council to go to the ballot or denial.
- Cities shall strive to not create Islands of unincorporated territory within the corporate limits of the City
- Land will come into the City based on underlying comprehensive plan designation and be zoned AH If no other zone has been requested or it does not have a county zone.
- Referred to the electorate for a vote of approval or denial

Just like the city ordinances, the McMinnville City Charter has also been amended over time to reflect changing requirements and procedures for annexations. In 1996, Section 3 of the McMinnville City Charter as adopted in 1971, was amended to read that "Unless mandated by State Law, any annexation, delayed or otherwise, to the City of McMinnville may only be approved by a prior majority vote among the electorate." (Ballot Measure 36-32, May 21, 1996.). This then established a history of annexation requests that were determined by a city-wide vote of the electorate.

In 2016, the Oregon State Legislature passed Senate Bill 1573 amending ORS 222.127, stating that essentially if a landowner, or landowners petition the City for annexation, the legislative body of the city shall annex the property without submitting the proposal to the electors of the city if the property is within the UGB, contiguous to the city limits, meets the comprehensive plan, and conforms to all other ordinances of the city. In other words, the City cannot force a proposed annexation to be put to the voters if all landowners within the proposed annexed area agree to the annexation.

#### *ORS 222.127*

- (1) This section applies to a city whose laws require a petition proposing annexation of territory to be submitted to the electors of the city.*
- (2) Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city shall annex the territory without submitting the proposal to the electors of the city if:*

- (a) *The territory is included within an urban growth boundary adopted by the city or Metro, as defined in [ORS 197.015 \(Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325\)](#);*
  - (b) *The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;*
  - (c) *At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and*
  - (d) *The proposal conforms to all other requirements of the city's ordinances.*
- (3) *The territory to be annexed under this section includes any additional territory described in [ORS 222.111 \(Authority and procedure for annexation\)](#) (1) that must be annexed in order to locate infrastructure and right of way access for services necessary for development of the territory described in subsection (2) of this section at a density equal to the average residential density within the annexing city.*
- (4) *When the legislative body of the city determines that the criteria described in subsection (2) of this section apply to territory proposed for annexation, the legislative body may declare that the territory described in subsections (2) and (3) of this section is annexed to the city by an ordinance that contains a description of the territory annexed. [2016 c.51 §2]*

The Oregon Legislature adopted this amendment to ORS 222.127 In 2016 because It had been determined that some cities were using the electorate vote to prevent the necessary growth of the city to meet Its required population absorption. (33 cities were managing annexations in this manner.)

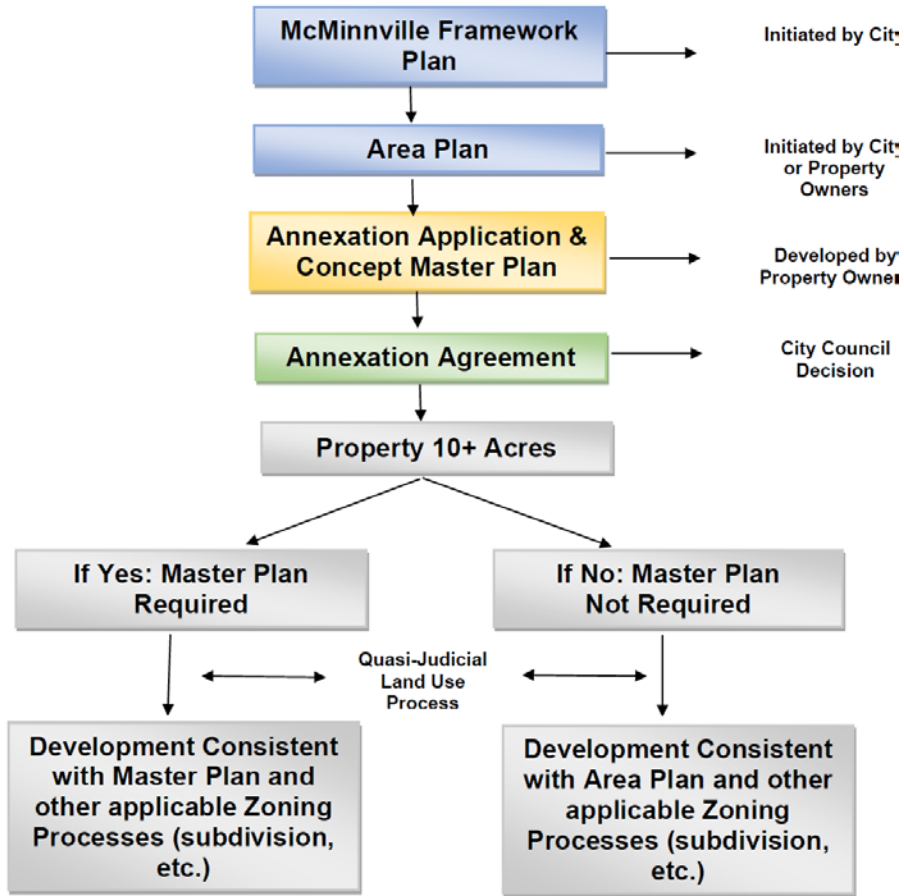
Corvallis and Philomath challenged the law shortly after It was enacted, arguing that the law Infringed on the home rule authority of cities to choose when and where to extend their boundaries. The Court of Appeals ruled In May, 2020 against the two cities, upholding the 2016 law amendments. The court cited key exceptions In the cities' charters that waive election requirements if an annexation Is "mandated by state law". The City of McMinnville has similar language In Its City Charter.

In December, 2020, the McMinnville City Council approved Ordinance No. 5098, adopting the McMinnville Growth Management and Urbanization Plan. Within that plan was a new annexation process for the City of McMinnville that would allow for thoughtful and intentional planning prior to annexation and compliance with ORS 222, the Oregon Statute that governs annexation processes In the State of Oregon.

This annexation process Is predicated on three major components:

- Area Plan
- Annexation Agreement
- Master Plan

**Summary Graphic of UGB Expansion Planning Process:**



**Comprehensive Plan Policies Governing Annexations:**

- 71.05 *The City of McMinnville shall encourage annexations and rezoning which are consistent with the policies of the Comprehensive Plan so as to achieve a continuous five-year supply of buildable land planned and zoned for all needed housing types. (Ord.4840, January 11, 2006; Ord. 4243, April 5, 1983; Ord. 4218, November 23, 1982)*
- 155.00 *The ability of existing police and fire facilities and services to meet the needs of new service areas and populations shall be a criterion used in evaluating annexations, subdivision proposals, and other major land use decisions.*
- 183.00 *The City of McMinnville, with the cooperation of Yamhill County, shall establish three categories of lands within the Urban Growth Boundary. Future urbanizable lands are those lands outside the city limits, but inside the Urban Growth Boundary. These lands shall be retained in agricultural resource zones until converted to urbanizable lands by annexation to the City of McMinnville. Urbanizable lands are those lands within the city limits which are not yet developed at urban densities. Conversion of these lands to the urban classification shall involve fulfillment of the goals and policies of this plan, provision of urban services, and application of appropriate implementation ordinances and measures. Urban lands are those lands within the city limits developed at urban densities.*
- 187.40 *The Great Neighborhood Principles shall guide long range planning efforts including, but not limited to, master plans, small area plans, and annexation requests. The Great*

*Neighborhood Principles shall also guide applicable current land use and development applications.*

187.90.00 *Prior to annexation of all lands greater than 10 acres in size, property owners shall submit a Master Plan for approval. (Proposed amended policy language per Attachment C).*

*Comprehensive Plan Proposals Relative to Annexations:*

48.30 **“Urban Holding” (UH) Zoning Map Designation.** *The City shall establish an “Urban Holding” (UH) zone, which may be applied to lands within the UH Comprehensive Plan Map designation. Lands within the UH Comprehensive Plan map designation may be annexed and rezoned to UH as an interim designation before urban zoning is applied, subject to completion of the master planning process consistent with an approved annexation agreement. (Ord. 5098, December 8, 2020)*

48.90 **Annexation Process.** *The City shall update its annexation ordinance (Ordinance No. 4357) to reflect new statutory requirements and a process consisting of an annexation agreement with the City Council that includes a conceptual master plan but is not a land-use process. (Ord. 5098, December 8, 2020)*

48.95 **McMinnville – Yamhill County Urban Growth Boundary Management Agreement.** *The City shall update its urban growth boundary management agreement (Ordinance No. 4146) with Yamhill County. (Ord. 5098, December 8, 2020)*

Comprehensive Plan Proposal 48.90 Instructs the City to update It’s annexation ordinance to reflect new statutory requirements and a process consisting of an annexation agreement with the City Council that Includes a conceptual master plan but Is not a land-use process.

Staff Is recommending amendments to the McMinnville City Code, repealing Title 16, which Is a duplicated land division ordinance similar to Chapter 17.53, and replacing It with new language dedicated to annexation requirements and processes for the City of McMinnville that reflects the process outlined and adopted In December, 2020, with the MGMUP, and to amend Chapter 17 as necessary to support this process.

The new language recommended for Title 16, "Annexations", reflects the provisions of ORS 222, the provisions of local Ballot Measure 36–32 passed In 1996 that are still relevant after Senate Bill 1753 (2016) was adopted and the process and values adopted with the MGMUP In December, 2020.

#### Discussion:

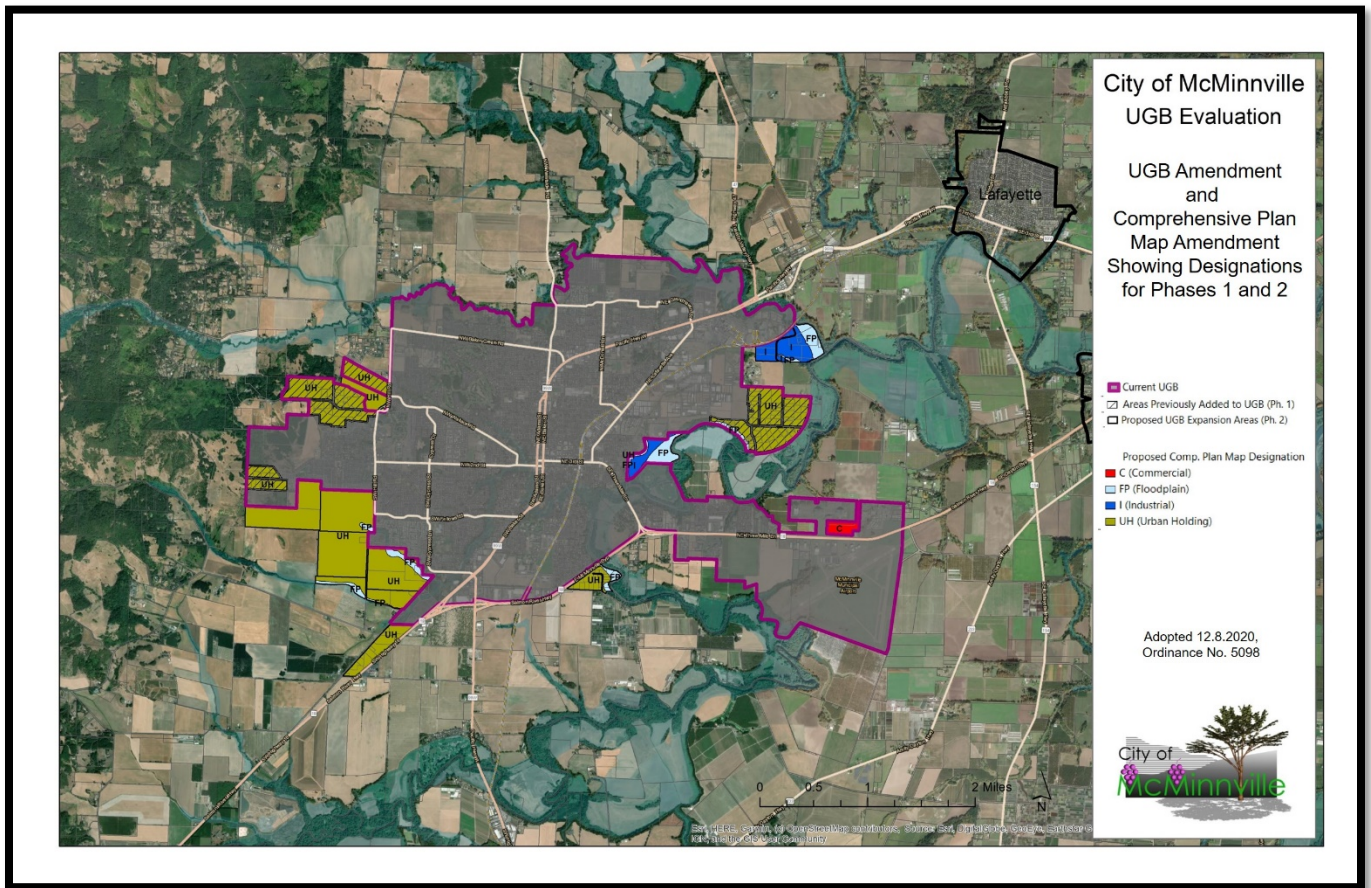
There are two inherent processes associated with an annexation: 1) demonstration of compliance with the McMinnville Comprehensive Plan, which is a land-use process; and 2) process and action of annexation, which is a governance process.

The process adopted in the MGMUP that these code amendments will implement these two processes separately. The land-use process demonstrating compliance with the



McMinnville Comprehensive Plan is required prior to the property being annexed into the city limits. For properties with a UH Comprehensive Plan Map designation, this process will entail the adoption of an Area Plan as a supplemental document to the McMinnville Comprehensive Plan as well as the adoption of a Master Plan prior to the annexation action for properties larger than 10 acres. For properties with a UH Comprehensive Plan Map designation, this process will entail a Comprehensive Plan Map amendment and Zoning Map amendment. For properties with a Commercial or Industrial Comprehensive Plan Map designation, this process will entail a Zoning Map amendment. All of these land-use processes are considered a Type IV land-use process requiring at a bare minimum a public hearing with the Planning Commission, the Planning Commission voting on a recommendation to the City Council and final action by the City Council.

Figure 1: City of McMinnville Comprehensive Plan Map.



The governance process will require an annexation application, an annexation agreement for all annexation requests approved by City Council and a City Council adopted ordinance approving the annexation. The annexation will not take effect until the land-use process is concluded including any associated appeals.



For properties with a UH Comprehensive Plan designation, the first step of the annexation process is the adoption of an Area Plan that delineates a high level land-use plan for the area identifying future comprehensive plan designations and city zoning that will meet the intention of the adopted Framework Plan which outlined the need for housing, employment land, and public amenities in that area to serve the city's acknowledged need for growth and development. This Area Plan will be adopted by the City Council as a supplemental document to the McMinnville Comprehensive Plan. This process will be a Type IV legislative land-use application requiring a public hearing with the Planning Commission and a final decision by the City Council.

Ordinance No. 5098 adopting the MGMUP also adopted amendments to the McMinnville City Code, Chapter 17.10, that provides the criteria and requirements for area plans and master plans. (Please see Attachment B).

Figure 2: Framework Plan Map from MGMUP Framework Plan adopted by Ordinance No. 5098.

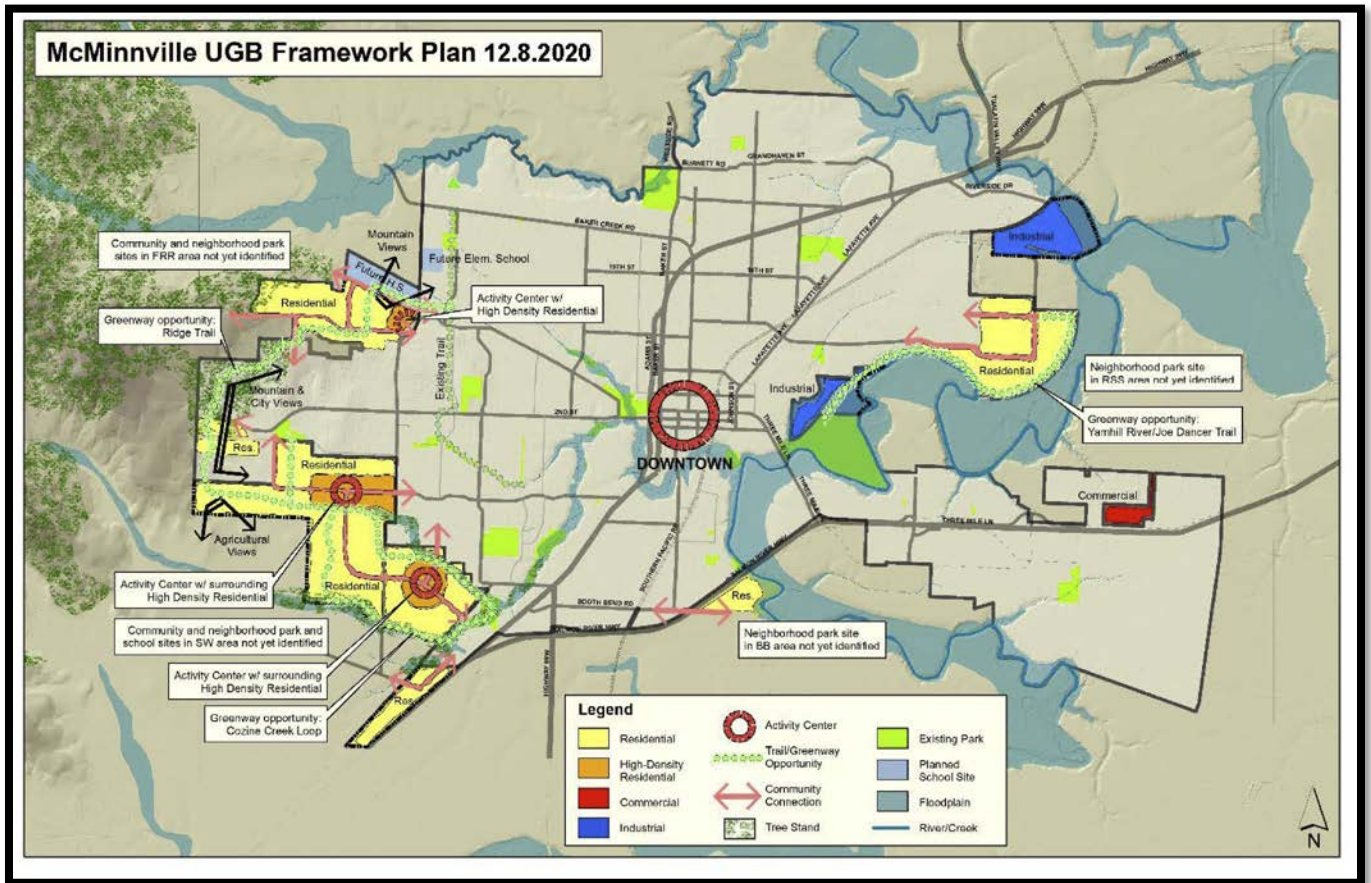


Figure 3: Excerpt of Acknowledged Land Need from MGMUP Framework Plan adopted by Ordinance No. 5098.

| Land Need               |              | Southwest | Fox Ridge Road | Riverside South | Redmond Hill Road | Booth Bend Road | Riverside North |
|-------------------------|--------------|-----------|----------------|-----------------|-------------------|-----------------|-----------------|
| Residential             |              |           |                |                 |                   |                 |                 |
| R-5                     | 36 acres     |           |                |                 |                   |                 |                 |
| Parks                   |              |           |                |                 |                   |                 |                 |
| Neighborhood Park       | 88.11 acres  |           |                |                 |                   |                 |                 |
| Community Park          | 58.84 acres  |           |                |                 |                   |                 |                 |
| Greenways/Natural Areas | 106.81 acres |           |                |                 |                   |                 |                 |
| Schools                 | 43 acres     |           |                |                 |                   |                 |                 |
| Commercial              | 39.3 acres   |           |                |                 |                   |                 |                 |
| Industrial              | Surplus      |           |                |                 |                   |                 |                 |

The next step is for the landowner(s) to submit an annexation application to the City of McMinnville including all of the elements described in proposed Section 16.20.020 (Attachment A). One element that will be required in the annexation application is a conceptual master plan demonstrating how the development of their property will achieve the intent of the Area Plan when annexed to the City. The conceptual master plan will be strictly an advisory document for the city’s development of an annexation agreement, however it should serve as a baseline for a future land-use application to show compliance with the McMinnville Comprehensive Plan and Municipal Code. For this process the landowner(s) should be meeting with city staff to discuss Area Plan compliance, public infrastructure needs, etc.

After the application is submitted, the landowner(s) will need to enter into an Annexation Agreement with the City Council outlining the contractual terms of annexation. (Proposed Section 16.30.030 and 16.40.020 of the MMC – Attachment A). The Annexation Agreement is an annexation contract between the landowner(s) and the City Council determining what is expected from both parties for the annexation to be successful.

The Annexation Agreement is the opportunity for the City to require elements of the concept master plan that the City deems is necessary for the public good associated with

the annexation. This typically includes the dedication and development of necessary public infrastructure improvements, as well as the dedication and development of public parks and trails, and in some cities, the development of necessary affordable housing to meet the city's future housing need. The Annexation Agreement is approved by Resolution of the City Council. This action does not bind the Concept Master Plan to the property nor is it a land-use action. However, the Annexation Agreement does identify the land-use process that the applicant needs to follow to demonstrate compliance with the McMinnville Comprehensive Plan as well as a timeframe in order to annex their property into the city. This land-use process needs to be concluded prior to the annexation becoming effective.

After the landowner(s) have achieved all of the performance metrics of the Annexation Agreement, the City Council would then consider the annexation by ordinance. This process would be conducted in adherence with ORS 222.

Attachment A provides the draft recommended amendments to the McMinnville City Code, Title 16 - Annexations, describing all of the annexation requirements and processes needed outside of the land-use process for annexations in order to be compliant with ORS 222.111 and to reflect historic community values relative to annexations.

Attachment B proposes necessary amendments to Title 17 of the MMC to support the city's new annexation process.

Attachment C proposed necessary amendments to the McMinnville Comprehensive Plan, Volume II, Goals and Policies, Chapter IX, "Urbanization".

The proposed amendments and process were provided to the City Council at a work session on July 21, 2021. The City Council directed staff to move forward with the proposed amendments.

After the work session the City Council received a letter from Mark Davis expressing his concerns about the proposed process. This letter was addressed in follow-up comments by the City Attorney at the next City Council meeting on July 27, 2021. Mark Davis followed up that City Council meeting with an additional email to city staff on August 1, 2021 and the City Attorney replied on August 5, 2021. (Please see Attachment D).

Mark Davis' testimony primarily focuses on whether or not the provision of public participation and opportunity for appeals are being retained in the annexation process with the proposed code amendments. Prior to the legislative amendments in 2016, a McMinnville annexation application was reviewed by the planning commission with a public hearing for compliance with the comprehensive plan and zoning ordinance. The

Planning Commission made a recommendation of approval or denial to the City Council. The City Council would then review the Planning Commission recommendation and decide whether or not they supported the recommendation (that the proposed development plan associated with the annexation complied with the comprehensive plan and zoning ordinance) and would then approve or deny the request to be put on the local ballot. The decision for compliance with the comprehensive plan and zoning ordinance was a quasi-judicial process with clear and objective criteria and the opportunity for appeal to the Land Use Board of Appeals (LUBA) by both the applicant and opponents depending upon the final decision of the City Council. The popular vote by the electorate was, in the view of the 2016 legislature, a discretionary vote without the opportunity for appeal by either the applicant or opponents.

ORS 222.127 is very specific in that it instructs cities to annex property into the city if it meets the performance metrics laid out in ORS 222.127(2).

- (2) *Notwithstanding a contrary provision of the city charter or a city ordinance, upon receipt of a petition proposing annexation of territory submitted by all owners of land in the territory, the legislative body of the city **shall** (emphasis added) annex the territory without submitting the proposal to the electors of the city if:*
  - (a) *The territory is included within an urban growth boundary adopted by the city or Metro, as defined in [ORS 197.015 \(Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325\)](#);*
  - (b) *The territory is, or upon annexation of the territory into the city will be, subject to the acknowledged comprehensive plan of the city;*
  - (c) *At least one lot or parcel within the territory is contiguous to the city limits or is separated from the city limits only by a public right of way or a body of water; and*
  - (d) *The proposal conforms to all other requirements of the city's ordinances.*

The proposed process eliminates the discretionary popular vote of the electorate based upon the fact that new laws do not allow cities to utilize that process for annexation decision-making in certain instances. However, it retains the quasi-judicial review of the proposal by the Planning Commission and the City Council for compliance with the comprehensive plan and zoning ordinance either through a master plan and comprehensive plan map amendment/zone map amendment process for properties 10 acres or more that are in the city's UGB and designated UH on the comprehensive plan map, or a comprehensive plan map amendment/zone map amendment for parcels less than 10 acres that are in the city's UGB and designated UH on the comprehensive plan map, or a zone map amendment for properties that are in the city's UGB and designated industrial or commercial on the comprehensive plan map. The final act of Annexation cannot occur unless this compliance is demonstrated, and properties will not be considered annexed until all opportunities for the land-use appeal have been exercised. The proposed process also provides an additional layer of public process and opportunity for appeal with the added provision of the need for an adopted Area Plan prior to annexation if the property is located in an urban holding comprehensive plan designation

in the urban growth boundary. The Area Plan will be adopted as a supplemental document to the Comprehensive Plan and subject to a public hearing with the Planning Commission and a final decision by the City Council, and can also be appealed to LUBA. The only occasions where an Area Plan is not required is for land that is designated either commercial or industrial land in the UGB on the City's Comprehensive Plan map.

The process proposed in the adopted MGMUP adds an additional layer of review to the process outlined in ORS 222.127, by requiring an adopted Area Plan and Master Plan prior to annexation. Since these were adopted as Comprehensive Plan policies and zoning ordinance amendments with Ordinance No. 5098, they qualify as part of the ORS 222.127(2)(d) provision.

All of the other provisions of the McMinnville's previous annexation ordinances that are not considered clear and objective land-use standards but still reflect the value of McMinnville relative to annexations have been captured in the proposed Title 16 amendments, including:

- Must have an adequate level of urban services available or made available, within three years time of annexation. (Proposed MMC 16.20.020(K)(1)).
- Findings documenting the availability of police, fire, and school facilities and services shall be made to allow for the proposed annexation. (Proposed MMC 16.20.020(K)(3)).

The City also received comments from Sid Friedman on August 18, 2021, expressing concerns about the clarity of the process and the distinction of land-use processes versus governance with some recommended amendments. (See Attachment E). Staff reviewed those, incorporated the recommended amendments, and restructured some of the proposed amendments to further clarify and distinguish the process, including requiring the annexation application prior to the annexation agreement and requiring a concept master plan as part of the annexation application so that it is required of all properties that want to annex into the city in order to help inform the development of the annexation agreement.

Additional Considerations for Discussion:

*How to address small parcels with a UH Comprehensive Plan Map designation.*

There are several property owners that would like to annex 5 acres or less that have a UH Comprehensive Plan Map designation. Should there be a separate process for them that does not rely on a larger Area Planning process?

**Attachments:**

Attachment A: Draft Title 16 MMC Amendments

Attachment B: Draft Title 17 MMC Amendments

Attachment C: Draft Comprehensive Plan Goals and Policies Amendments, Chapter IX

Attachment D: Communications from Mark Davis

Attachment E: Communications from Sid Friedman

Attachment F: Decision Document for G 3-21

**Fiscal Impact:**

There is no immediate fiscal impact to the City of McMinnville with this action.

**Recommendation:**

Staff recommends the Planning Commission recommend the proposed amendments to the McMinnville City Council for adoption.

**“THAT BASED ON THE FINDINGS OF FACT, THE CONCLUSIONARY FINDINGS FOR APPROVAL, AND THE MATERIALS SUBMITTED BY STAFF, THE PLANNING COMMISSION RECOMMENDS THAT THE CITY COUNCIL APPROVE THE PROPOSED AMENDMENTS PRESENTED IN DOCKET G 3-21.”**