

MEMORANDUM

City of Springfield

Date: November 5, 2007
To: Springfield Planning Commission
From: Gregory Mott, Planning Division Manager
Subject: Annexation Transition Code Amendments

COMMISSION
BRIEFING
MEMORANDUM

ISSUE:

By enactment of the 2007 legislature, the Lane County Local Government Boundary Commission ceases to exist on July 1, 2008; annexation to cities becomes the jurisdiction of the affected city while annexation to districts, district creation, and district dissolution or district consolidation is the jurisdiction of Lane County. In acknowledgement of the abruptness of this legislation and the limited opportunities to get on a Boundary Commission agenda, applications to annex to cities submitted after January 1, 2008 shall be processed solely by the cities. The attached amendments are intended to fulfill this obligation and will, if adopted by Council on December 3, 2007, become effective on January 1, 2008.

BACKGROUND:

Senate Bill 417 abolishes the Lane County Local Government Boundary Commission (Boundary Commission), extinguishes the assessment to cities that funds Boundary Commission operations, and terminates the Boundary Commission staff, all effective June 30, 2008. This legislation also amends most of ORS 199 (statute conferring Boundary Commission authority) and shifts the annexation laws now applicable to Springfield to ORS 222. The "sunset" date for the Boundary Commission and Boundary Commission staff is June 30, 2008, but the Boundary Commission will not process any applications submitted after December 31, 2007. The Boundary Commission will utilize this final 6-month period to process/complete all pending annexation applications and any others submitted between now and December 31st. For example, the City is currently processing 9 annexation applications submitted earlier this year but which have not gone before the Council for action. Each of these applications will be presented to the Council *this year* in order to be included in Boundary Commission business in the first half of *next year*. This will allow these applications to be processed using the same law in effect at the time of their submittal. Annexations submitted after January 1, 2008 will be processed under the new law (ORS 222) and under the sole jurisdiction of the Springfield City Council.

DISCUSSION:

The consequences of these changes are significant to Springfield both in terms of procedure and cost. Until enactment of SB 417, the City's role in the annexation process was to determine if services could be extended (how and at whose cost), request Council adoption of a resolution in support of the annexation, and deliver to the Boundary Commission staff the documentation used by the Council for this recommendation. From that point forward the Boundary Commission staff would validate all signatures; confirm the presence or absence of electors residing on the property; confirm the accuracy of the form of annexation (double/triple majority; delayed effective date; extra-territorial extension of services, expedited process); review, and if necessary, perfect the legal description; prepare legal notices; prepare the staff report in response to legislative criteria of approval and Metro Plan policies; and staff the Boundary Commission public hearings. Following a Boundary Commission approval, Boundary Commission staff would provide all the necessary notifications, including Lane County Assessment and Taxation; Lane County Clerk; LCOG GIS; affected schools, utilities and other service providers; Secretary of State;

the Department of Revenue; and the affected city. All of this work, before and after Council action, becomes the sole responsibility of City staff, including Development Services, Public Works, City Manager, Finance and the City Attorney.

The substance of annexation has changed along with the staffing responsibilities. Under the Boundary Commission rules (ORS 199) non-contiguous annexations were permitted – ORS 222 does not allow non-contiguous annexations therefore such an annexation is not permitted by the proposed Code amendments¹.

The Boundary Commission laws required Boundary Commission approval if water or sanitary sewer was extended outside the city limits of the service provider, also known as an extra-territorial extension. ORS 222 recognizes extra-territorial extension for purposes of health hazard remediation or simply for service extension in the absence of a health hazard. The former can be contingent upon annexation; the latter can occur through a contract and consent to *eventual* annexation. The proposed Code amendments include both circumstances but the non-health hazard circumstance is a local option; the Council does not have to allow this service provision circumstance. The Metro Plan states that the extension of any new urban service to unincorporated territory can only occur through annexation, contractual annexation, and annexation to an existing district, or creation of a new district. (Chapter II-C, page 6).² The draft ordinance is consistent with these Metro Plan policies.

ORS 199 allowed for an expedited procedure which is essentially an approval of an annexation within 25 days of submittal and without a public hearing. The expedited procedure is not included in the provisions of ORS 222 but this absence does not preclude the City from providing such a process; the draft ordinance recommends public hearings for all annexation applications but does include an exception to the hearing process for residences on an undividable lot where sanitary sewer is already available to the property. This provision can be included or not at the Council's preference.

Under Boundary Commission law, annexations were approved by the Boundary Commission and appeals of those decisions were heard by the Court of Appeals. Such an arrangement meant the action of the Council and Boundary Commission was not a land use decision and therefore not subject to the 120 day decision standard or the *Dolan v. Tigard* test for proportionality. As a result the annexation process took considerably longer than 120 days and may have included conditions of approval difficult to obtain in the normal land use decision environment. Annexations which are the jurisdiction of cities are land use decisions, are appealed to LUBA and may be subject to 120 day time lines. The draft ordinance does not speak to the 120 day timeline for processing but it does preserve annexation agreements as a condition of approval.

The draft amendments to the Code were released for public review on November 13th, seven days before the public hearing on the 20th. The Planning Commission will be asked to conduct a public hearing on the proposed Code amendments; consider public testimony as it applies to these amendments; consider the "local option" provisions (those not required by ORS 222) and forward a recommendation to Council for their consideration during their public hearing on December 3rd. As was noted in footnote 2, consistency with the Metro Plan is relevant to those growth management policies that do not include

¹ Policy #12, Chapter II-C, page 5 provides as follows: "When the following criteria are met, either Springfield or Eugene may annex land which is not contiguous to its boundaries." This policy is now at odds with the applicable statute Eugene and Springfield must observe when processing annexations.

² The exigent nature of this legislation makes it imperative that the SDC amendment is in effect on 1/1/08; it is not possible to amend the appropriate sections of the Metro Plan on such short notice and in any case, all three elected bodies must adopt amendments to this section of the Metro Plan.

provisions of ORS 199. Where references to the Boundary Commission or annexation methods exclusive to the Boundary Commission or ORS 199 exist in the Metro Plan, these Code amendments have no effect in as much as the Oregon Legislature has invalidated those provisions.

RECOMMENDED ACTION:

Conduct a public hearing on these proposed Code amendments, consider public testimony and findings, and forward a recommendation(s) to the City Council.

- Attachments:
1. Staff Report and Findings in Support of Proposed Code Amendments
 2. Planning Commission Final Recommendation
 3. Proposed Code Amendments
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