



NO. 2020-13

**AN ORDINANCE AMENDING CHAPTER 17.78 OF THE SANDY MUNICIPAL CODE RELATED TO ANNEXATIONS.**

**Whereas, the Sandy Municipal Code (SMC),** Chapter 17.78, Annexation, contains procedures and standards for the review of proposed annexations to the City;

**Whereas,** SMC Section 17.78.50 contains the review criteria for a proposed annexation and Section 17.78.60 contains application requirements;

**Whereas,** the City Council has determined it is necessary to revise SMC Chapter 17.78 to more clearly identify annexation criteria and required submittal items, and to make related administrative updates and revisions to the chapter;

**Whereas,** SMC Section 17.78.25 contains tree retention standards that allows the City to apply its tree retention standards to a proposed annexation;

**Whereas,** the City Council seeks to discourage tree removal within the Urban Growth Boundary (UGB) and to require an increased annexation waiting period in the event of significant tree removal prior to annexation;

**Whereas,** the City Council has determined that the amendments to SMC Chapter 17.78 as set forth below are in the best interest of the City and its residents.

**NOW, THEREFORE, THE CITY OF SANDY ORDAINS AS FOLLOWS,**

Section 1: Chapter 17.78 of the Sandy Municipal Code is amended as shown in Exhibit A.

Section 2: In support of this ordinance, the City Council adopts the findings and conclusions attached as Exhibit B.

Section 3: All remaining provisions of the Sandy Comprehensive Plan and Title 17 of the Sandy Municipal Code are reaffirmed in their entirety.

This ordinance is adopted by the Common Council of the City of Sandy and approved by the Mayor this 06 day of July 2020



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Stan Pulliam, Mayor

ATTEST:



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Jeff Aprati, City Recorder

## CHAPTER 17.78 ANNEXATION

### 17.78.00 INTENT

The procedures and standards established in this chapter are required for review of proposed annexations in order to:

- A. Maximize citizen involvement in the annexation review process by holding a public hearing;
- B. Ensure that public facilities are or will be available to serve land annexed to the City;
- C. Establish a system for measuring the physical, environmental, fiscal and related social effects of proposed annexations; and,
- D. Where possible and practical, avoid the creation of irregular boundaries or annexations that create “island,” “cherry stem” or “shoestring” annexations.

### 17.78.10 PROCEDURAL CONSIDERATIONS

- A. The corporate limits of the City shall include all territory encompassed by its boundaries as they now exist or are modified as provided herein unless mandated by State Law.
- B. The City may annex an unincorporated area that is surrounded by the City boundary.
- C. The City may annex land for public facilities. Public facilities include but are not limited to schools, senior centers, roads, police and fire stations, parks or open space, and public water, sewer and storm drainage facilities.

### 17.78.15 TYPES OF ANNEXATION

- A. Type A: Annexation in conformance with conceptual zoning designation
- B. Type B: Annexation + zone change, including Parks and Open Space (POS) and/or Flood and Slope Hazard (FSH) Overlay District
- C. Type C: Annexation + plan map change + zone change

### 17.78.20 CONDITIONS FOR ANNEXATION

The following conditions must be met prior to beginning an annexation request:

- A. The requirement of Oregon Revised Statutes, Chapters 199 and 222 for initiation of the annexation process are met;
- B. The site must be within the City of Sandy Urban Growth Boundary (UGB);

- C. The site must be 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; and
- D. The site has not violated Section 17.78.25.

### **17.78.25 TREE RETENTION**

The intent of this section is to treat property with annexation potential (in the UGB) as if it had been subject, prior to annexation, to the tree retention provisions of the City's Urban Forestry Ordinance (Chapter 17.102) and Flood and Slope Hazard (FSH) Overlay District (Chapter 17.60), to discourage property owners from removing trees prior to annexation as a way of avoiding Urban Forestry Ordinance provisions, and to prevent unnecessary tree removal for future subdivision layout. In accordance with ORS 527.722, the State Forester shall provide the City with a copy of the notice or written plan when a forest operation is proposed within the UGB. The City shall review and comment on an individual forest operation and inform the landowner or operator of all other regulations that apply but that do not pertain to activities regulated under the Oregon Forest Practices Act.

- A. Properties shall not be considered for annexation for a minimum of ten (10) years if any of the following apply:
  - 1. Where any trees six (6) inches or greater diameter at breast height (DBH) have been removed within 25 feet of the high water level along a perennial stream in the ten (10) years prior to the annexation application.
  - 2. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 80 feet of the high water level of Tickle Creek in the ten (10) years prior to the annexation application.
  - 3. Where more than two (2) trees (six (6) inches or greater DBH) per 500 linear feet have been removed in the area between 25 feet and 50 feet of the high water level along other perennial streams in the ten (10) years prior to the annexation application.
  - 4. Where any trees six (6) inches or greater DBH have been removed on 25 percent or greater slopes in the ten (10) years prior to the annexation application.
  - 5. Where more than ten (10) trees (11 inches or greater DBH) per gross acre have been removed in the ten (10) years prior to the annexation application, except as provided below:
    - a. Sites under one (1) acre in area shall not remove more than five (5) trees in the ten (10) years prior to the annexation application.
    - b. Sites where removal of ten (10) or fewer trees will result in the site not meeting the minimum tree retention requirements of Chapter 17.102, Urban Forestry.
    - c. For properties in or adjacent to the Bornstedt Village Overlay (BVO), tree removal must not result in fewer than six (6) healthy 11 inch DBH or greater trees

per acre. For properties in or adjacent to the BVO and within 300 feet of the FSH Overlay District, tree removal must not result in fewer than nine (9) healthy 11 inch DBH or greater trees per acre.

Rounding: Site area shall be rounded to the nearest half acre and allowed tree removal shall be calculated accordingly. For example, a 1.5 acre site will not be allowed to remove more than fifteen (15) trees in the ten (10) years prior to the annexation application. A calculation of 1.2 acres is rounded down to one (1) acre and a calculation of 1.8 is rounded up to two (2) acres.

Cumulative Calculation: Total gross acreage includes riparian areas and other sensitive habitat. Trees removed under Sections 17.78.25(A) 2. and 3. shall count towards tree removal under Section 17.78.25(A) 5.

B. Exceptions. The City Council may grant exceptions to this section where:

1. The property owner can demonstrate that Douglas Fir, Western Red Cedar, or other appropriate native trees were planted at a ratio of at least two trees for every one tree removed no less than ten (10) years prior to the submission of the annexation application, and at least 50 percent of these trees have remained healthy; or
2. The Council finds that tree removal was necessary due to hazards, or right-of-way or utility facilities or access; or
3. The trees were removed because they were dead, dying, or diseased and their condition as such resulted from an accident or non-human cause, as determined by a certified arborist or other qualified professional; or
4. The trees removed were nuisance trees; or
5. The trees were removed as part of a stream restoration and enhancement program approved by the Oregon Department of Fish and Wildlife as improving riparian function; or
6. The trees removed were orchard trees, Christmas trees, or commercial nursery trees grown for commercial purposes; or
7. The application of this section will create an island of unincorporated area.

### **17.78.30 ZONING OF ANNEXED AREAS**

- A. All lands within the urban growth boundary of Sandy have been classified according to the appropriate city land use designation as noted on the comprehensive plan map (as per the city/county urban growth management area agreement). The zoning classification shall reflect the city land use classification as illustrated in Table 17.26.20.

#### **17.78.40 EXISTING USE, ACTIVITY OR STRUCTURE**

- A. As of the effective date of annexation, no use or activity shall be considered non-conforming if the use or activity: (1) violates or conflicts with county zoning regulations and (2) is not classified as non-conforming under county zoning regulations. Any such use or activity shall constitute a violation of this ordinance.
- B. Any use, activity or structure that is existing at the effective date of annexation, under a Clackamas County use permit with a time limit imposed, shall not be a non-conforming use, but may continue for the extent of the time limit. Such use permits may not be extended without City approval.
- C. Any lot or parcel of land duly recorded in the Clackamas County Recorder's Office prior to the effective date of this Ordinance and having an area, width, depth, or street frontage less than that required in the Zoning District regulations in which such lot or parcel is situated, shall be deemed to be a lot and may be used as a building site, provided that all other regulations for the Zoning District shall apply.

#### **17.78.50 ANNEXATION CRITERIA**

Requests for annexation shall not have an adverse impact on the citizens of Sandy, either financially or in relation to the livability of the city or any neighborhoods within the annexation area.

- A. Except as provided in subsection B of this section, an application to annex property into the city shall meet the following criteria:
  - 1. The application demonstrates how the property will be served by adequate public facilities and services, including sanitary sewer, domestic water, transportation, internet and parks. Public facilities and services must be provided in a manner consistent with the City's adopted public facility plans, comprehensive plan, transportation system plan, parks and trails master plan, and any applicable area plan or master plan. The application must demonstrate how the public facilities and services will be provided to the property in an orderly, efficient, and timely manner.
  - 2. The application demonstrates how impacts to existing City public facilities and services (sewer, water, stormwater, and transportation) from development of the property will be mitigated, if necessary. Mitigation may include construction of on-site or off-site improvements or improvements to existing infrastructure to City standards and specifications. The application must demonstrate adequate funding for the mitigation. If the financing requires City funds, the funding must be approved by the City Council prior to annexation. The City may rely on the standards and criteria of SMC Chapter 17.84 (Improvements Required with Development) and other relevant standards and criteria in the comprehensive plan or development code to analyze an applicant's proposed mitigation of impacts. In order to ensure adequate public facilities and services will exist to serve property annexed to the City, an applicant may be required to enter into an agreement with the City that governs the extent and timing of infrastructure improvements.

3. The application demonstrates that the annexation and proposed zoning is consistent with the Transportation Planning Rule (TPR) or explains that the TPR analysis is not required.
  4. The annexation is in the best interest of the City. Generally, the annexation is in the best interest of the city if it meets one or more of the following criteria:
    - a. A needed solution for existing problems, resulting from insufficient sanitation, water service, or other urban service related problems; or
    - b. Land for development to meet urban needs and that meets a logical growth pattern of the city and encourages orderly growth; or
    - c. Needed routes for utility and transportation networks.
- B. The standards described in paragraphs A.1 and A.2 above do not apply to:
1. An application to annex property that is smaller than one acre.
  2. An “island” annexation under ORS 222.750.
  3. An annexation for which the City has executed an annexation agreement and the agreement allows for A.1 and A.2 to be delayed until development is proposed.

#### **17.78.60 APPLICATION SUBMISSION REQUIREMENTS**

Requests for annexation shall be made on forms provided by the city for such purposes and shall be accompanied by all of the following:

- A. Written consent form to the annexation signed by the owners of all land to be annexed.
- B. A legal description certified by a registered surveyor or engineer.
- C. The application fee established by the city.
- D. A list of property owners within one thousand (1,000) feet of the subject property and two sets of mailing labels.
- E. Vicinity map showing the area to be annexed including adjacent city territory.
- F. Site Plan drawn to scale (not greater than one inch = fifty feet), indicating:
  1. The location of existing structures (if any);
  2. The location of streets, sewer, water, electric and other utilities, on or adjacent to the property to be annexed;
  3. Approximate or surveyed location of areas subject to regulation under Chapter 17.60, Flood and Slope Hazard (FSH) Overlay District, including, but not limited to, wetland boundaries, streams, top of bank, buffers, areas of 25 percent or greater slope, restricted development areas, and the FSH analysis area. If the applicant wants to avoid an

additional zone map modification request at time of development, then these areas will need to be surveyed at the time of annexation application submittal.

G. Narrative Statement explaining the proposal and addressing:

1. Availability, capacity and status of existing water, sewer, drainage, transportation, fire, and park facilities;
2. Additional facilities, if any, required to meet the increased demand and any proposed phasing of such facilities in accordance with projected demand;
3. Ability to adhere to adopted City plans including, but not limited to, the Transportation System Plan, Parks and Trails Master Plan, Comprehensive Plan, and Specific Area Plans; this analysis may be deferred if the applicant enters into an annexation agreement as provided in Section 17.78.50(B); and,
4. Method and source of financing required to provide additional facilities, if any.

H. Transportation Planning Rule findings, if applicable.

### **17.78.70 REVIEW PROCEDURE**

#### **Type A, B & C**

1. Pre-application conference;
2. Submission of completed application;
3. Review by Planning Commission with recommendation to City Council;
4. Review by City Council;
5. Approval or denial by City Council.

### **17.78.80 EXCEPTIONS**

Exceptions may be granted for identified health hazards and for those matters which the City Council determines that the public interest would not be served by undertaking the entire annexation process. The City Council may authorize an exception to any of the requirements of this chapter. An exception shall require a statement of findings that indicates the basis for the exception.

### **17.78.90 ANNEXATION CONDITIONS**

- A. All properties annexed are subject to inclusion within applicable advance financing districts and urban renewal districts.
- B. These conditions apply to all annexed properties regardless of transfers of the ownership of such properties.



**Exhibit B**  
**Ordinance No. 2020-13**

1. Goal 1 – Citizen Involvement. Both the Planning Commission and the City Council held a public hearing prior to adopting the ordinance. The Commission held a public hearing on May 27, 2020. The Council held a public hearing on June 15, 2020. The City provided notice of the public hearings in accordance with state law and the City’s development code. The annexation code (Section 17.78.00, Intent, and Section 17.78.70, Review Procedure) specifies that two public hearings are required for all annexation applications to maximize citizen involvement in the annexation review process. Goal 1 is satisfied.
2. Goal 2 – Land Use Planning. Goal 2 requires the ordinance to be coordinated with other governmental entities and to be supported by an adequate factual base. The City provided notice of the proposed ordinance to Clackamas County on May 1, 2020 and provided 35-day notice to the State of Oregon on April 22, 2020. Goal 2 is satisfied.
3. Goal 3 – Agricultural Lands. Goal 3 does not apply to the decision.
4. Goal 4 – Forest Lands. Goal 4 requires the City 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.” Section 17.78.25, Tree Retention, addresses tree retention on properties outside the City of Sandy limits but within the Urban Growth Boundary (UGB). In the past, property owners have clear-cut their forested land in anticipation of annexing and subdividing. Updates to this section of the code are intended to discourage property owners from clear cutting their property prior to annexation to help prevent unnecessary loss of forest land by increasing the annexation waiting period in the event of significant tree removal prior to annexation. Goal 4 is satisfied.
5. Goal 5 – Natural Resources, Scenic and Historic Areas, and Open Spaces. Goal 5 requires the City to “protect natural resources and conserve scenic and historic areas and open spaces.” Riparian areas and fish and wildlife habitat are listed as protected Goal 5 resources. The updates to Section 17.78.25, Tree Retention, are designed to better protect riparian areas and habitat by increasing the annexation waiting period in the event of significant tree removal prior to annexation. Goal 5 is satisfied.
6. Goal 6 – Air, Water and Land Resources Quality. Goal 6 requires the city to “maintain and improve the quality of the air, water and land resources of the state.” The updates to Section 17.78.25, Tree Retention, are intended to limit unnecessary tree removal prior to annexation by increasing the annexation waiting period in the event of significant tree removal prior to annexation. Limiting tree removal in riparian areas also helps maintain water quality. Tree retention in general helps maintain both air and soil quality. Goal 6 is satisfied to the extent it applies to the decision.
7. Goal 7 – Areas Subject to Natural Hazards. Goal 7 requires the City to “protect people and property from natural hazards.” Section 17.78.25, Tree Retention, limits tree removal on steep

slopes (slopes 25 percent or greater) prior to annexation. Limiting tree removal on steep slopes helps prevent erosion and landslides. Goal 7 is satisfied to the extent it applies to the decision.

8. Goal 8 – Recreational Needs. No resorts are contemplated or authorized by this decision. The City’s comprehensive plan, parks master plan, and development regulations governing recreational needs (e.g. park dedication/fee in-lieu-of requirements, open space provisions, etc.) are not affected by the decision. Goal 8 is satisfied to the extent it applies to the decision.
9. Goal 9 – Economic Development. The City has adopted an economic opportunities analysis (“EOA”) as Goal 9 requires. The EOA includes in its analysis all properties within the City’s urban growth boundary, including unincorporated property. Nothing in this text amendment affects any aspect of the EOA. Therefore, Goal 9 is satisfied.
10. Goal 10 – Housing. The City has an adopted buildable lands inventory and housing needs analysis. Those studies include all properties within the City’s urban growth boundary, including unincorporated property. Nothing in this text amendment affects any aspect of those studies. Therefore, Goal 10 is satisfied.
11. Goal 11 – Public Facilities and Services. The City has an existing public facilities plan that includes all properties within the City’s urban growth boundary, including islands of unincorporated property. The plan assumes that the City is serving islands of unincorporated property and only properties contiguous to the City will be allowed to annex. The amendments will clarify annexation criteria with respect to public facilities and services requirements. Therefore, this text amendment will not undermine or contradict any aspect of the existing public facilities plan. Goal 11 is satisfied.
12. Goal 12 – Transportation. The decision does not affect the City’s comprehensive plan with respect to Goal 12, or its transportation system plan or the standards governing transportation and transportation-related facilities. The City’s comprehensive plan includes an acknowledged Goal 12 element that contains policies to ensure sufficient and adequate transportation facilities and services are available (or will be available as appropriate) to serve lands within the UGB. The City’s existing TSP anticipates and accounts for the potential development of all land inside the UGB in its analysis. This Ordinance does not affect either the Goal 12 element or the TSP. Moreover, the transportation planning rule is triggered only when a post-acknowledgment amendment “significantly affects” a transportation facility. The amendments will clarify annexation criteria and application submittal requirements related to transportation and the Transportation Planning Rule. The ordinance does not meet the definition of a “significant effect” pursuant to OAR 660-012-0060(1)(a)-(c) because it will not: (1) change the functional classification of an existing or future facility; (2) change the standards implementing the functional classification system; or (3) result in any of the effects listed in 0060(1)(c)(A)-(C). Therefore, Goal 12 is satisfied for the purposes of this decision.
13. Goal 13 – Energy Conservation. The City’s comprehensive plan with respect to Goal 13 and its standards governing energy conservation are not affected by the decision. Goal 13 is satisfied.
14. Goal 14 – Urbanization. The decision does not analyze or expand the City’s urban growth boundary. Goal 14 is not applicable.