

RESOLUTION NO. 2025

A RESOLUTION OF THE CITY OF WILSONVILLE ADOPTING A POLICY ENCOURAGING THE PRESERVATION OF SIGNIFICANT NATURAL RESOURCES AND TREES PRIOR TO ANNEXATION

WHEREAS, the City of Wilsonville has adopted regulations protecting environmentally sensitive natural resources and trees within the City; and

WHEREAS, on occasion property owners have removed or degraded natural resources within areas adjacent or near to the City in order to maximize development opportunities; and

WHEREAS, the City Council recognizes that most property owners are good stewards of their land and that these property owners seek to balance the long-term preservation and protection of sensitive natural resources with the development of their land; and

WHEREAS, the Urban Growth Boundary defines City of Wilsonville's ultimate growth area, within which the City will be the eventual provider of the full range of urban services; and

WHEREAS, the policy is strictly advisory in nature and the City Council retains complete discretion over annexation of lands without regard to the policy's application; and

WHEREAS, the City Council finds that it is in the public interest to encourage the preservation of significant trees and sensitive natural areas on properties within the unincorporated portions of Clackamas and Washington counties; and

WHEREAS, annexation decisions under ORS Chapter 222 may be based solely upon determination of what is in the public interest and may be made without reference to comprehensive plans and implementing ordinances; and

WHEREAS, the public interest in maintaining natural resources and making annexation decisions based upon preservation of such resources is facilitated by the policy adopted herein,

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The City Council hereby adopts the "Policy Encouraging the Preservation of Significant Natural Resources and Trees Prior to Annexation" attached to this Resolution as Exhibit A and incorporated by this reference;

Section 2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 16th day of July 2007, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, Mayor

ATTEST:



Starla J. Schur, Deputy City Recorder

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Núñez	<u>Yes</u>
Councilor Knapp	<u>Yes</u>
Councilor Ripple	<u>Yes</u>

POLICY ENCOURAGING THE PRESERVATION OF SIGNIFICANT NATURAL RESOURCES AND TREES PRIOR TO ANNEXATION

Purpose: The intent of this policy is to encourage property owners interested in petitioning the City for annexation to preserve and protect significant natural resources and trees prior to annexation in a manner consistent with the City of Wilsonville Development Code. Through the application of consistent and equitable guidelines within the City limits and in future annexation areas, the preservation and protection of significant natural resources and trees for existing and future residents is facilitated.

The policy is strictly advisory in nature. The City Council retains complete discretion over annexation of lands without regard to the policy's application. The policy contains no prohibition against any activities involving the use of land, but merely informs property owners that their actions may affect review and approval of a future annexation request by the owner to the City Council.

The City Council recognizes that most property owners are good stewards of their land. In this context, "stewardship" of the land has the meaning of the individual's responsibility to manage their land with proper regards to the rights of others. This policy balances the long-term preservation and protection of significant natural resources and trees together with development of land to provide the following:

- a. To protect and preserve natural resources, open space, flood hazard areas, the Significant Resource Overlay Zone (SROZ), and the Willamette River Greenway;
- b. To protect, preserve, and provide proper maintenance and use of trees and woodlands in order to protect natural habitat and prevent erosion; and
- c. To protect and preserve a water resource, such as a river, stream, lake, wetland or other body of water whether navigable or non-navigable, that a state and/or federal agency has jurisdiction over.

I. Applicability of Policy.

- (1) The provisions of this policy apply to property owners interested in petitioning the City of Wilsonville for annexation. If a property owner is not interested in seeking annexation by the City of Wilsonville, the policy does not affect their property.
- (2) Two classes of parcels are addressed by this policy, which include:
 - a. Parcels within the Urban Growth Boundary:

As addressed in the following sections, the provisions of the policy apply to property owners interested in petitioning the City for annexation.

- b. Parcels outside the Urban Growth Boundary:
The policy is for informational and educational purposes. City staff is available to provide assistance to property owners in reviewing the guidelines of the policy.

II. Parcels from which trees of a certain size have been removed.

The City Council declares that it will more favorably view a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 (annexations petitioned by property owners or resident electors) if trees are preserved and protected under the criteria of the Wilsonville Tree Preservation and Protection Code following the date of this policy.

III. Parcels with significant natural resources that are inventoried or for which there may be a future determination.

The City Council declares that it will more favorably view a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 (annexations petitioned by property owners or resident electors) when:

- (1) The significant natural resources on the parcel have been preserved and protected consistent with the City natural resource regulations following the date of this policy; and
- (2) The parcel has previously been evaluated by the City and determined to have significant natural resources that would have been protected if located within the City limits, or the parcel has significant natural resources for which there may be a future determination as to whether significant natural resources are present.

IV. Parcels where water resources have been degraded in violation of state and/or federal law.

If state and/or federal laws have been violated regarding water resources following the date of this policy, the City Council declares that it will decline a petition for annexation of a parcel pursuant to ORS 222.125 or 222.170 (annexations petitioned by property owners or resident electors), unless the property owner:

- (1) Pays in full all fines, civil penalties and other assessments imposed or otherwise required by any state and/or federal agency;
- (2) Pays in full any damages awarded pursuant to the provisions of ORS Chapter 196 or pursuant to any similar or related statutes or regulations;

- (3) Fully complies with any order of any state and/or federal agency related to the degradation of the water resource; and
- (4) Complies with all mitigation or restoration requirements imposed or ordered by a state and/or federal agency, and successfully maintains the mitigation or restoration for at least five years following mitigation implementation.

Compliance with this section is mandatory because the City Council does not have the ability to waive these state and/or federal requirements. For the purposes of this policy, "water resource" shall mean any natural waterway including any river, stream, lake, wetland or other body of water, whether navigable or non-navigable.

V. General Provisions

1. Compliance with this policy will not be deemed to assure that the City Council will approve the annexation petition. This policy will not be construed as preventing the City Council from exercising its full discretionary authority in granting or denying petitions for annexation as otherwise permitted by Oregon law. Application of city and Metro land use requirements, for example is a separate matter.
2. This policy applies to annexations that are initiated or requested by the owners of the property to be annexed and that require the consent of owners or electors under ORS Chapter 222 (annexations petitioned by property owners or resident electors). It does not apply to annexations by election under ORS Chapters 222 or 195 or to non-consensual "island" annexations.
3. Exemptions. The City Council may choose not to approve annexation of property where the preceding provisions have not been met, unless the City Council elects, in its discretion, to exempt the property from this policy for any of the following reasons, such as:
 - a. Emergency procedures or emergency activities undertaken which are necessary for the protection of public health, safety and welfare, or measures to remove or abate hazards, including but not limited to fire hazards, and nuisances; or
 - b. The uses and activities are exempt from the City's natural resources or tree preservation and protection regulations; or
 - c. Forest uses and activities conducted in accordance with an established forest management plan or in compliance with approved forestry practices. Forest practices include the administrative rules as adopted by the Oregon Department of Forestry.

- d. Events, activities and uses caused by forces beyond the control of the property owner, or impacts to natural resources that have been mitigated using appropriate repair or restoration/enhancement methods; or
- d. In the City Council's judgment the public interest would be best served by approving the annexation or approving the annexation with conditional requirements.

VI. Obligations Run With the Land.

Any obligation of the "property owner" under these policies will "run with the land" and will be an obligation of the owner of the property at the time required for performance of the obligation, regardless of any prior transfers of title.

VII. Public Notice.

- (1) The City Manager will publicize the adoption of this policy by providing notice to the news media, local realtors, local natural resource consultants, the Home Builders Association of Metropolitan Portland, the Clackamas County Department of Transportation and Development, the Washington County Land Use and Transportation Department and to those neighborhood associations whose boundaries include unincorporated areas adjacent to the City limits. The City Manager will encourage the neighborhood associations and County Planning Organizations to provide notice of this policy to their membership and citizens, and to any realtor that posts signage advertising a property for sale within the unincorporated area. The City Manager will also provide written notice of these policies to the owners (as listed in the property tax assessment roll) of property within the unincorporated area that have significant natural resources designated on the Wilsonville Significant Resources Overlay Map.
- (2) Upon expansion of the Urban Growth Boundary, the City Manager will publicize the policy to affected property owners or parties in accordance with the procedure listed in this section.

**COMMUNITY DEVELOPMENT
STAFF REPORT**

Date: July 10, 2007
To: Honorable Mayor and City Council
From: Kerry Rappold, Natural Resources Program Manager
Subject: Resolution No. 2025: Annexation Policy for Natural Resources Preservation

Introduction:

Staff has prepared a policy that addresses the preservation of significant natural resources and trees on properties proposed for annexation. The policy establishes guidelines for property owners that petition the City of Wilsonville to be annexed. Through the application of consistent and equitable guidelines within the City limits and in future annexation areas, the City Council will assure the preservation and protection of significant natural resources and trees for existing and future generations.

The policy is strictly advisory in nature. The City Council retains complete discretion over annexation of lands without regards to the policy's application.

Background:

The rationale for developing the policy is partially predicated on situations that have occurred within the unincorporated areas on which trees have been cut, vegetation removed and streams degraded. In establishing the policy, the city seeks to work cooperatively with residents in future annexation areas to preserve and protect significant natural resources and trees in a manner consistent with the city's development code. Salmonid species listed under the Federal Endangered Species Act and the regulation of water quality issues under the Federal Clean Water Act provides another important reason for adopting the policy. When properties with resource degradation are subsequently annexed, the city may become obligated to develop programs and expand funds to mitigate the negative effects of natural resource removal and degradation.

Requirements for significant natural resources and tree protection are found in sections 4.139 and 4.600 of the city's development code, respectively. The Significant Resource Overlay Zone (SROZ), as addressed in Section 4.139, was developed pursuant to the requirements of Statewide Planning Goal 5. It included an inventory of significant natural resources, such as streams, riparian corridors, wetlands and upland forests. As part of the inventory, properties that were in the Urban Growth Boundary were included. Typically, only relatively minor impacts and encroachments to the SROZ are allowed by the development code.

The tree protection code, as addressed in Section 4.600, provides protection for individual trees. All trees greater than six (6) inches at d.b.h. (diameter at breast height) are protected under the development code. However, in many instances, it is possible to receive a tree removal permit

for the removal of one to three trees within a twelve month period. The removal of more than 3 trees usually entails a more involved process for application submittal requirements and the corresponding review.

Section IV of the proposed policy addresses properties where water resources have been degraded in violation of state or federal law. Water resources include any river, stream, lake, wetland or other body of water, whether navigable or non-navigable. It is the intent of this policy to ensure that violations are addressed, and compliance is achieved with state and federal law regarding these types of natural resources.

Description of Policy:

The policy is divided into seven sections: applicability of policy, trees of a certain size, significant natural resources, water resources, general provisions, obligations that run with the land, and public notice. Under sections II and III, references to the City's regulations for the protection and preservation of trees or natural resources are included. References to state and/or federal regulations are addressed under Section IV.

Upon adoption of the policy, staff, including arborists and natural resource professionals, will be available to work with property owners to help identify significant natural resources and trees and provide clarification on the process required for proposed uses or activities. Pursuant to Section I of the policy, properties currently within the UGB will receive the highest priority in regards to staff resources.

The policy is consistent with the authority and discretionary powers the City has to annex properties as prescribed in State law. Annexation decisions under Oregon Revised Statutes 222 may be based solely upon determination of what is in the public interest and may be made without reference to comprehensive plans and implementing ordinances. Pursuant to the policy, the City Council may exempt a property from the policy due to public interest concerns and other factors.

City Council Review of Policy:

The City Council reviewed the proposed policy at four separate work sessions in 2006: May 1st, July 31st, October 16th, and December 18th, and four separate work sessions in 2007: February 5th, February 21st, March 5th and May 7th. In addition a public hearing was held before the City Council on January 18th, and two public meetings in March and June. At the aforementioned work sessions and public hearing, City Council members identified revisions to the policy and received public input. The current version of the policy reflects the input provided by the City Council, staff and the public.

The most significant revisions to the policy were the following:

- 1) Shortened the length of the policy from 8 pages to 4 pages.

- 2) Section I (Preservation of significant natural resources and trees prior to annexation) was deleted and combined with the purpose statement.
- 3) Revised the purpose statement to clarify the intent of the policy is to apply consistent and equitable regulations within the City limits and in future annexation areas. In addition, wording was added that describes the advisory nature of the policy and the fact that the policy contains no prohibitions on property owner activities or uses.
- 4) Removed the background section due to its length and the redundancy of the information.
- 5) Revised wording in the policy to reflect a more positive tone, which included stating the City Council “will more favorably view a petition for annexation” where the natural resources have been protected consistent with the policy.
- 6) Added an “applicability” section to the policy. It describes the two-tiered system for properties inside and outside the Urban Growth Boundary.
- 7) Deleted “procedures and specific provisions” from sections II, III, and IV. The appropriate references to the Wilsonville Development Code in Sections II and III and the state and/or federal requirements in Section IV are still retained in the policy.
- 8) Removed all references to mitigation in sections II and III of the policy. Provisions for mitigation are stipulated in the referenced code sections for the SROZ and Tree Protection. This allows for the preservation of the significant natural resources and trees to be the primary emphasis of the policy, and not the opportunity to mitigate.
- 9) In Sections II and III, eliminated the certification procedures and the fees associated with this certification process. The fees probably act as a disincentive for property owner’s to comply with the policy.
- 10) Revised Exemptions under Section V (General Requirements) to indicate the City Council may exempt a property from the policy when “In the City Council’s judgment the public interest would be best served by approving the annexation or approving the annexation with conditional requirements.”
- 11) In Section V under Exemptions, added an exemption that allows property owners more latitude in regards to managing forest resources (i.e. consistent with the Forest Practices Act). This exemption reflects the different type and scale of forest management that occurs on rural property versus urban property.
- 12) In Section VII, included a statement that addresses noticing property owners about the policy when the Urban Growth Boundary is expanded. This additional notice reflects the bifurcated nature of the policy as it applies to properties inside and outside the UGB.

Public Outreach:

Staff prepared a brochure and notices that were used as part of the public outreach effort for the policy. The brochure is arranged in an easy to read question and answer format, which provides a brief description of the policy and outlines some of the more important requirements for affected property owners. Staff has also prepared a FAQ (i.e. frequently asked questions) fact sheet that includes "user-friendly" information about the policy.

The property owner mailing list included properties within one (1) mile of the City limits north of the Willamette River and within one-half (½) mile of the City limits south of the Willamette River. Almost one-thousand property owners received the brochure and notices for the policy. It was assumed, these properties are the most likely to be seeking annexation in the near future.

Notices were also sent to the planning departments in Clackamas and Washington counties, and the policy was discussed with county staff. Following adoption of the policy, a notice will be sent to the affected property owners, news media, local realtors, local natural resource consultants, the Home Builders Association, neighborhood associations (whose boundaries border unincorporated areas adjacent or near the City limits) and planning departments in Clackamas and Washington counties.

Two public meetings were held to gather input from the public about the proposed policy. At the first meeting on March 15th, there was considerable opposition expressed about the proposed policy. Based on the input from the public meeting and a discussion with the City Council at the May 7th work session, staff revised the policy's content and length. The revised policy was presented to the public at a second meeting on June 16th. In general, the public reacted very favorably to the revised policy, and indicated staff had addressed many of their concerns about the previous policy.

A number of articles about the policy have been published in the Wilsonville Spokesman and the Oregonian. The policy, brochure and FAQ fact sheet are available for viewing on the city's Web site. Staff has responded to numerous phone calls and e-mails about the policy, as well as speaking with property owners in person.

Based on the responses received from the public, the most common question, and misunderstanding about the policy related to whether the city was pursuing annexation of their property. Staff clarified the intent of the policy, and indicated annexations must follow a prescribed process that includes UGB expansion and subsequent requests for annexation.

Recommendation:

Approval of the accompanying resolution authorizing Staff to work with property owners to preserve significant natural resources and tree on properties proposed for annexation in the future.