

RESOLUTION NO. 5045

A RESOLUTION CLARIFYING THE PROCEDURE TO BE EMPLOYED FOR THE ANNEXATION OF AN ISLAND AREA BETWEEN THE EXISTING CITY LIMITS AND THE CALAPOOIA RIVER

WHEREAS, the Oregon Legislature created certain procedures to simplify and expedite the annexation of unincorporated territory that is wholly surrounded by existing city limits, or the city limits and a body of water, and further provided that such annexations may be declared by ordinance or resolution of the Council subject to referendum; and

WHEREAS, ORS 222.750 provides for the annexation of unincorporated territory surrounded by the corporate boundaries, or the corporate boundaries and a body of water, without the consent of any owner of property or resident within the subject territory, except as a local charter may provide otherwise; and

WHEREAS, as noted above, ORS 222.750 specifically provides that an ordinance or resolution annexing an island is subject to referendum; and

WHEREAS, only **legislative** decisions are subject to referendum; therefore, the Council believes that the decision to propose to the voters the annexation of an island territory should similarly be deemed **legislative**; and

WHEREAS, the City of Albany Charter, Section 54, requires that all annexations, other than "health hazard," be approved by a prior majority vote among the electorate; and

WHEREAS, on July 28, 2004, after providing mailed notice to affected property owners, the City Council conducted a public hearing on the question of submitting the subject "West Albany island" annexation to Albany voters; and

WHEREAS, the City, on its own motion, through Resolution No. 5007, declared the City Council's intent to submit the annexation of the "West Albany island" area to the voters; and

WHEREAS, on September 1, 2004, the City received a Notice of Intent to Appeal of said resolution to the Land Use Board of Appeals; and

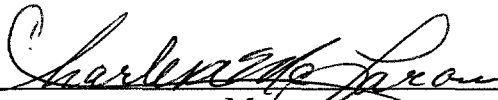
WHEREAS, the City Council believes it is self-evident that annexation of statutorily defined islands will always comply with a city's land use regulations; and

WHEREAS the City Council desires, by this resolution, to establish a procedure which will address petitioners' anticipated concerns by requiring a land use public hearing and the adoption of land use findings prior to any City action to proclaim the subject annexation, in the event of voter approval.

NOW, THEREFORE, BE IT RESOLVED BY THE ALBANY CITY COUNCIL that the following procedure will be applied to the "West Albany island" annexation:

1. Prior to the City Council proclamation of annexation pursuant to ORS 222.150 the City will hold, following appropriate notice, a land use hearing.
2. The annexation will only be proclaimed after the City Council has determined that all applicable land use criteria have been met, following adoption of appropriate land use findings and mailing of the notice of decision.
3. In the event that the annexation is approved by the voters and the City Council subsequently determines that the application does not meet applicable land use criteria, the City Council will either not proclaim the annexation or take such other steps as may be necessary to nullify the election or initiate withdrawal of the territory in accordance with ORS 222.460.
4. If the Land Use Board of Appeals or a court of competent jurisdiction determines that a land use determination of eligibility for annexation is required as precondition to this annexation, the City Council interprets such a determination as a requirement of "state law" as that term is used in Ordinance No. 5366, Section 5, and will, therefore, not proclaim the annexation of the "West Albany island" without satisfying the appropriate land use requirements.

DATED AND EFFECTIVE THIS 20TH DAY OF SEPTEMBER 2004.



Mayor

ATTEST:



City Clerk