



## **LEGAL COUNSEL – FORMATION OF A SPECIAL DISTRICT**

**Disclaimer of Legal Service: This packet is intended for informational purposes only. It is not intended as an exhaustive summary of all aspects of the process to form a special district, but rather to provide the public with an overview of the process to form a special district in Deschutes County. Persons wanting to form a special district are encouraged to carefully review all relevant law, including the relevant provisions of Oregon Revised Statutes Chapter 198, before attempting to form a special district. The County and its attorneys do not provide legal advice or representation to members of the public. All petitioners, landowners, and interested persons are expected and encouraged to retain their own legal counsel to answer questions related to the formation of a special district, and to prepare or assist in the preparation of the petition and all other documents necessary to form a special district.**

Oregon Revised Statutes Chapter 198 provides the general requirements to form a special district, while more specific requirements may be found in the chapter or section of the Oregon Revised Statutes specifically governing the distinct types of special districts. *See* ORS 198.010 (listing the types of special districts that may be created under Oregon law and the corresponding chapters or sections of the Oregon Revised Statutes where the formation requirements for each type of district can be found (“Principal Act”). Formation of the special districts found in ORS 198.010 must be initiated, conducted and completed as provided by ORS 198.705 to ORS 198.845, and according to any of the specific requirements found in the Principal Act for the type of special district proposed.

Persons wanting to form a special district (“petitioners”) must initiate the formation of a district by submitting a petition for formation with a description of the proposed district boundaries to Deschutes County. While the County has provided a sample form petition with this packet that may be used by petitioners to initiate the formation of a district, petitioners must complete the petition on their own and must otherwise comply with the requirements found in Oregon law.

### **INITIATION BY PETITION**

Formation of a special district is initiated by a filing a petition to form a special district with the Deschutes County Clerk. The required contents of a petition are found in ORS 198.750. Among other requirements, a petition must set forth a description of the boundaries of the territory proposed to be included in the district. The requirements for filing a petition are found in ORS 198.765. A petition must be filed with a security deposit or bond, as required by ORS 198.775, and an economic feasibility statement pursuant to ORS 198.749. Before filing a petition with the County, it must be circulated among all of the owners of real property within the area of the proposed district (“landowners”) for their review and signature. *See* ORS 198.755 and .760.

Prior to circulating a petition among landowners, the petitioner must first file a *prospective* petition with the County Clerk. *See* ORS 198.748. The *prospective* petition must identify the petitioners, including the chief petitioner(s), and include at least a description of the boundaries of the territory proposed to be included in the district. The *prospective* petition

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is primarily intended to provide the County with notice of the territory within its boundaries which petitioners intend to include in the proposed district. It therefore does not have to meet all of the requirements of ORS 198.749 through .755.

*Before circulating the petition*, the designated chief petitioner(s) must complete an economic feasibility statement for the proposed district. If a permanent tax rate limit for the operating funds of the district is required or is otherwise sought by petitioners, this statement forms the reasoning for the proposed permanent tax rate limit. *See* ORS 198.749 and .750(1)(g). A feasibility statement is required regardless of whether a permanent rate limit is sought in the petition.

An economic feasibility statement must include:

1. A description of services and functions to be performed or provided by the proposed district
2. An analysis of the relationships between the described services and functions and other existing or needed services.
3. A proposed first year line item operating budget and projected third year line item operating budget that demonstrates the economic feasibility of the proposed district.

*Before filing the petition with the County*, it must be approved by an endorsement from any agency specified by the Principal Act, if applicable; must satisfy the requirements of ORS 198.749 and 198.750 to 198.775; and must be otherwise sufficient under the Principal Act. *See*, ORS 198.800.

*Before filing the petition with the County*, the petition and feasibility study must be circulated among the landowners within the boundaries of the proposed district (“electors”) for their review and approval. *See* ORS 198.750 - .760. Electors will signal their approval by signing the petition. In order to be filed with the County, a petition must be signed by not less than fifteen percent (15%) of the electors or 100 electors, whichever is greater, registered within the boundaries of the proposed district; or by fifteen (15) landowners or the owners of 10 percent (10%) of the acreage, whichever is *greater*, within the boundaries of the proposed district. If the requisite number of signatures are not included with the petition, the petition will not be filed with the County by the County Clerk.

*Completed petitions are filed with the County Clerk.* *See* ORS 198.675. Upon filing, the petition must be accompanied by the economic feasibility statement required by ORS 198.749. Petitions unaccompanied by a feasibility study will be rejected. Petitioner also must include a security deposit or bond, as required at the time of filing by the County. *See* ORS 198.775. When a petition for formation of a district includes a proposed permanent rate limit for the operating taxes of the district, the petition must be filed not later than one hundred eighty (180) days before the date of the next May or November election at which a vote on the question of formation will take place. *See* ORS 198.675(1).

*Once the petition is filed*, the County Clerk has ten (10) days from the date the petition is received to determine whether it has been signed by the requisite number of qualified signers. If there are a sufficient number of signatures, the petition shall be filed by the Clerk and referred to the County Commission for a hearing on formation of the proposed district. If

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there are insufficient signatures, the Clerk will notify the petitioner that the petition cannot be filed and may return the petition. A petition cannot be filed unless the Clerk or County Assessor, as otherwise required, certify that the signatures of all signers of the petition have been compared with the appropriate records, that the number of qualified signers appearing on the petition has been ascertained, and that the petition is signed by the requisite number of qualified signers. *See*, ORS 198.765(2) and (3).

The County Clerk cannot accept a petition for filing unless the signatures thereon have been secured within six (6) months of the date on which the first signature on the petition was obtained. *See* ORS 198.765(1). For example, if the first signature in support of a petition is secured on January 1<sup>st</sup>, all required signatures must be secured by June 30<sup>th</sup> of the same year in order for the petition to be accepted for filing.

## **HEARINGS PROCESS**

Once properly completed petitions have been circulated and filed by the County Clerk, the County Commission will schedule a hearing on the petition. *See* ORS 198.800(1). The hearing will be held between thirty (30) days and fifty (50) days after the petition is filed. Notice of hearing will be posted in at least three (3) places and published by two (2) insertions in the County's newspaper of record. *See* ORS 198.800(2). The notice must include:

1. The purpose for which the district is to be formed
2. The name and boundaries of the proposed district
3. The time and place of the hearing on the petition
4. A statement that all interested persons may appear and be heard.

On or before the date set for any hearing on the petition, any person interested in the proposed formation of a special district may appear and present written statements for or against granting of the petition. At the hearing on the petition for formation, the County Commission may receive oral or written testimony in favor of or opposing formation. Any written statement objecting to the formation must clearly identify the error, omission or defect that is the basis for the objection. If the written objection is not timely filed, the objection is considered waived.

Upon conclusion of the hearing, the County Commission must evaluate the petition by applying the criteria in ORS 199.462, which requires consideration of the local comprehensive planning for the area, economic, demographic and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed district and the statewide goals. *See* ORS 198.805 and .810(1). The County Commission may modify the boundaries of the proposed district to include or exclude territory considering the benefit the proposed district will have to territory in or outside of the proposed district. The County Commission may not modify the boundaries to exclude land that could be benefited by the district formation and may not include land that will not be benefited. If the County Commission determines that land has been improperly omitted from the proposed district and the owner has not appeared, the County Commission must continue the hearing and order notice to be given to the non-appearing owner in the manner provided by ORS 198.805.

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If the County Commission approves the formation of a special district, the County Commission will adopt an order identifying the name and boundaries of the proposed district and setting a time and place, between twenty (20) and fifty (50) days from the date of the order, for a final hearing on the petition. *See* ORS 198.810(2). The order will declare that if no written requests for an election are filed as required in ORS 198.810(3), the Commission will adopt an order creating the district at the final hearing. Notice of the final hearing will be given by publication.

### **MANNER OF FORMATION**

Special districts can be formed in three ways:

- 1) Consent by all landowners in the proposed district boundaries;
- 2) Election requested by landowners or as otherwise required by law; or
- 3) Order by the County Commission for a district entirely within the county boundaries.<sup>1</sup>

#### **- Formation by Consent of Landowners**

Pursuant to ORS 198.830, a special district may be created by the consent of all landowners within the boundaries of the proposed district. If all landowners consent to its formation, they may directly petition the County to form the district. If unanimous consent among the landowners cannot be secured, formation by election must be pursued.

A petition for formation of a special district by consent must contain all of the information required by ORS 198.750 to 198.755, and must be verified by the affidavit of at least one of the petitioners that the petitioner believes the signers of the petition comprise all the landowners, at the time of the verification, of all the real property included within the proposed district.

Special districts must have a governing board. If members of the governing board of a special district formed by consent are to be elected to office, the petition must state the number of members to be on the board, list the names of each person agreeing to serve as a member of the first board, and contain the written acceptance of each person agreeing to serve as members of the first board.

Upon receipt of a fully complete, valid petition to form as special district, the County Commission will hold a hearing on the petition. If the County Commission finds that all landowners within the area of the proposed district have joined in the petition and the area could benefit by the formation of a district, the County Commission will adopt an order approving formation of the district.

If formation is approved in this manner, an election to form a special district is not necessary. The County Commission will enter an order creating the district, and the persons nominated by the petition and accepting nomination to the governing board will constitute the first board of the district.

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<sup>1</sup> As this document is created to assist citizens in forming special district, initiation by the County Commission is not discussed herein.

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### **- Formation by Election**

Formation by election is the presumed method to form a special district. If unanimous consent of the landowners within a proposed district cannot be obtained, formation can only proceed through election. In order to pursue formation of a special district by election, a petition must be signed by not less than fifteen percent (15%) of the electors or 100 electors, whichever is *greater*, registered within the boundaries of the proposed district; or fifteen (15) landowners or the owners of 10 percent (10%) of the acreage, whichever is the greater, who are registered within the boundaries of the proposed district. *See* ORS 198.755(1).

An election on the question of formation of the district will only be held if written requests for such an election are filed with the County Commission at or before the final hearing on the petition by not less than fifteen (15) percent of the electors or 100 electors, whichever is the *lesser* number, registered in the proposed district. *See* ORS 198.810. Unless a sufficient number of written requests for an election is received by the County Commission at the final hearing, the Commission will enter an order creating the special district and no election on the question of formation will take place.

Notwithstanding the above, if a petition includes a permanent rate limit for operating taxes for the proposed district and the petition is approved by the County Commission, an election on the question of whether the district should be formed *must* be held. *See* ORS 198.810(4). This is true even if all landowners within the proposed district consent to its formation. Thus, if a petition includes a permanent rate limit for the proposed district, formation cannot be pursued by consent, and no written requests by electors are required in order to proceed to an election on the question of formation.

If a sufficient number of written requests for an election are filed with the County on or before the date of the final hearing, or if the petition for formation includes a permanent tax rate for the proposed district, the County Commission will order an election on the question of forming the district. The Commission will cause notice of the election to be published by two insertions in the newspaper of record. *See* ORS 198.815.

If written requests for an election are filed by less than the required number of electors and no permanent tax rate is included in the petition, the County Commission will dismiss the requests for an election and enter an order creating the district. *See* ORS 198.815. However, if this occurs, the County Commission still must order an election for the purpose of electing the initial board of directors for a district. *See* ORS 198.825. The procedure for nominating and electing board members is provided in Oregon Revised Statutes Chapter 255 and/or the Principal Act.

The County Commission has thirty (30) days after the date of the election to canvass the votes (derived from County Clerk's certified abstract of vote tally) and adopt an order regarding the proposed formation of the special district. *See* ORS 198.820. If a majority vote favors formation of the district, the Commission will adopt an order creating the district. After the date of the formation order, the inhabitants of the territory within the new district become a municipal corporation with all the powers conferred by the Principal Act. The new district pays the costs of forming the district and the County refunds the cash deposit or other form of

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security to the chief petitioner(s) who posted the security with the County.

If a majority votes against formation of the special district, the County Commissioners must adopt an order dismissing the petition. The County Clerk will reimburse the County for the costs of the attempted formation from the security deposit or other form of security posted by the chief petitioner(s) and refunds any remaining portion of the security deposit to the chief petitioner(s). If the costs of the attempted formation exceed the amount of the deposit, the chief petitioners must pay the amount of the excess costs.

PETITION TO FORM SPECIAL DISTRICT

(Name of District)

To: The Board of County Commissioners, Deschutes County, Oregon

The undersigned, in support of this Petition, state as follows:

- 1. This Petition for Formation is filed pursuant to ORS 198.705 to 198.955 on (date) and Petitioners request the Board commence proceedings to form the territory described below as (name of district), Deschutes County, Oregon:

Four horizontal lines for describing the territory and boundaries of the proposed District.

(describe the territory and boundaries of the proposed District in detail. If more room is needed, a detailed description may be attached to this petition)

- 2. The principal act for (name of district) is ORS

(Proper statutory reference required, see ORS 198.010 for listing of appropriate principal act)

- 3. (if applicable) The District board members will be generally elected and the number of board members is (if consent by all landowners) The names of the first board members are as follows and each has consented in writing by the attached acceptance:

Three horizontal lines for listing proposed board members.

(list each proposed board member)

- 4. (if applicable) The District includes a proposed permanent rate limit for operating taxes and the proposed rate is (expressed in dollars per thousand dollars of assessed value)

- 5. This Petition for Formation affects only Deschutes County and is not in any incorporated city limits.

- 6. The Board of (name of agency(ies) required to give approval under district's principal act) approved the petition pursuant to ORS 198.800 on (insert date). (Certification of such approval by the relevant agency(ies) is provided below.)

- 7. The territory subject to this Petition for Formation is primarily inhabited / uninhabited (circle one). This petition is signed by land owners and/or registered voters in the area proposed to be formed as indicated opposite their respective signature, and all signatures were obtained on or after the day of, 20\_\_.

- 8. (if applicable) The proposed formation is subject to the following terms and conditions:

Two horizontal lines for listing terms and conditions.

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9. This Petition has been signed by at least 15 percent of the electors, or 100 electors whichever number is greater, registered in the area proposed to be formed; or at least 15 owners of land or owners of 10 percent of the acreage, (whichever is greater) within the area proposed to be formed. (or)

(if consent by all landowners) This petition has been signed by 100 percent of the landowners in the proposed district as affirmed by the attached affidavit signed by \_\_\_\_\_, stating the petitioner believes that the signers constitute all the owners.

10. A security deposit form and payment and an economic feasibility statement are attached to this petition.

Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, Chief Petitioner(s).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address, City, State, ZIP

Approved by the Board of

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Agency Signature

By: \_\_\_\_\_

(Print Name)

Title: \_\_\_\_\_

\_\_\_\_\_  
DATED this \_\_ day of \_\_\_\_\_, 20\_\_

Approved by the Board of

\_\_\_\_\_  
Name of Agency

\_\_\_\_\_  
Agency Signature

By: \_\_\_\_\_

(Print Name)

Title: \_\_\_\_\_

\_\_\_\_\_  
DATED this \_\_ day of \_\_\_\_\_, 20\_\_



NAME OF DISTRICT: \_\_\_\_\_  Formation  Withdrawal  Annexation

PRINT NAME		DATE SIGNED	PROPERTY ADDRESS/ RESIDENCE ADDRESS (If Different)	LANDOWNER IN THE PROPOSED TERRITORY/ REGISTERED VOTER IN THE PROPOSED TERRITORY
1	_____ Print Name _____ Signature	_____ Date	_____ PROPERTY ADDRESS _____ RESIDENCE ADDRESS (If Different)	<b>Landowner</b> Yes _____ No _____ Acreage _____ <b>Registered Voter</b> Yes _____ No _____ Pre _____
2	_____ Print Name _____ Signature	_____ Date	_____ PROPERTY ADDRESS _____ RESIDENCE ADDRESS (If Different)	<b>Landowner</b> Yes _____ No _____ Acreage _____ <b>Registered Voter</b> Yes _____ No _____ Pre _____
3	_____ Print Name _____ Signature	_____ Date	_____ PROPERTY ADDRESS _____ RESIDENCE ADDRESS (If Different)	<b>Landowner</b> Yes _____ No _____ Acreage _____ <b>Registered Voter</b> Yes _____ No _____ Pre _____
4	_____ Print Name _____ Signature	_____ Date	_____ PROPERTY ADDRESS _____ RESIDENCE ADDRESS (If Different)	<b>Landowner</b> Yes _____ No _____ Acreage _____ <b>Registered Voter</b> Yes _____ No _____ Pre _____
5	_____ Print Name _____ Signature	_____ Date	_____ PROPERTY ADDRESS _____ RESIDENCE ADDRESS (If Different)	<b>Landowner</b> Yes _____ No _____ Acreage _____ <b>Registered Voter</b> Yes _____ No _____ Pre _____

I, \_\_\_\_\_, certify that I circulated this petition, and every person who signed this petition did so in my presence. Signature: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_  
 SUBSCRIBED AND SWORN before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
 Notary Public for Oregon \_\_\_\_\_ My Commission Expires: \_\_\_\_\_  
 Signature \_\_\_\_\_ (affix notary stamp)

# Security Deposit

## Special District Formation or Reorganization

**SEL 704**

rev 01/18  
ORS 198.775

Formation

Annexation

Withdrawal

Dissolution

### District and Precinct Information

Name of District

Number of Precincts in District

Amount of Deposit per Precinct

Total Deposit (max of \$10,000)

### Chief Petitioners

I/We hereby declare if the costs of the attempted formation annexation, withdrawal or dissolution of

\_\_\_\_\_ district exceeds the

deposit, I/we will pay to the county treasurer the amount of the excess cost (ORS 198.775)

Name print

Signature

Residence

Mailing Address if different

City

State

Zip Code

City

State

Zip Code

Amount of Contribution/Value of Secured Deposit

Kind of Contribution\*

Cash

Bond

Other Security Deposit

Name print

Signature

Residence

Mailing Address if different

City

State

Zip Code

City

State

Zip Code

Amount of Contribution/Value of Secured Deposit

Kind of Contribution\*

Cash

Bond

Other Security Deposit

Name print

Signature

Residence

Mailing Address if different

City

State

Zip Code

City

State

Zip Code

Amount of Contribution/Value of Secured Deposit

Kind of Contribution\*

Cash

Bond

Other Security Deposit

*Continued on the reverse side of this form*

**Person/Organizations Providing Any Part of Cash/Security Deposit**

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

Name print			Signature		
Residence			Mailing Address if different		
City	State	Zip Code	City	State	Zip Code
Amount of Contribution/Value of Secured Deposit			Kind of Contribution*		
			<input type="checkbox"/> Cash	<input type="checkbox"/> Bond	<input type="checkbox"/> Other Security Deposit

**Additional Description**

\*Provide additional description of security deposit below, on the back of this form or on separate sheets. Additional contributors may be listed on separate sheets and attached.