



## Staff Report

---

**File #:** 19-366

**Version:** 1

**Date:** 8/26/2019

**Item #:** 4. a.

---

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

**SUBJECT:**

Petitioner-Initiated Annexation of Territory Located at the 4400-4600 Blocks of Hazelgreen Road NE - 97305 (Annexation Case No. C-735)

Ward(s): 5

Councilor(s): Ausec

Neighborhood(s): Northgate

**ISSUE:**

Shall the City Council:

1. Find that the Petitioners have signed a valid triple majority petition for annexation of the Territory, in conformance with Oregon Revised Statutes (ORS) Chapter 222;
2. Determine that Annexation Case No. ANXC-735 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2019-8 ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) map designation of the Territory from "Industrial" to "Parks, Open Space, and Outdoor Recreation";
4. Change the zoning from Marion County UT-20-IND (Urban Transition - 20 Acre - Industrial) to City of Salem PA (Public Amusement); and
5. Withdraw the Territory from Marion County Fire District #1?

**RECOMMENDATION:**

1. Find that the Petitioners have signed a valid triple majority petition for annexation of the Territory, in conformance with Oregon Revised Statutes (ORS) Chapter 222;
2. Determine that Annexation Case No. ANXC-735 satisfies the criteria of Salem Revised Code

(SRC) 260.060(c) and adopt Order No. 2019-8 ANX (Attachment 2);

3. Change the Salem Area Comprehensive Plan (SACP) map designation of the Territory from "Industrial" to "Parks, Open Space, and Outdoor Recreation";
4. Change the zoning from Marion County UT-20-IND (Urban Transition - 20 Acre - Industrial) to City of Salem PA (Public Amusement); and
5. Withdraw the Territory from Marion County Fire District #1.

## **SUMMARY:**

This is a petitioner-initiated annexation of a 45.26-acre territory located at the 4400-4600 Blocks of Hazelgreen Road NE (Marion County Assessor Map and Tax Lot Number 062W31D00100) with a consolidated change in the Salem Area Comprehensive Plan (SACP) map designation from "Industrial" to "Parks, Open Space, and Outdoor Recreation" and a change in zoning from Marion County UT-20-IND (Urban Transition - 20 Acre - Industrial) to City of Salem PA (Public Amusement). A vicinity map is included as Attachment 1.

## **FACTS AND FINDINGS:**

1. The Petitioners have met the annexation, petition, application, information submission, fee, waiver, and all other requirements for petitioner-initiated annexations including, but not limited to, those found in ORS Chapter 222, SRC Chapter 260, SRC 260.030, SRC 260.035, and SRC 260.040.

The property owner, the City of Salem, filed an application and petition for annexation of property approximately 45.26 acres in area. Including right-of-way of Hazelgreen Road NE, the "Territory" proposed for annexation is 47.44 acres.

The Territory consists of one parcel. The owner has requested annexation and submitted a valid triple majority annexation petition (Attachment 2, Exhibit A).

The triple majority requirements of ORS 222.170(1) are satisfied because the owner of the petitioned property represents 100 percent of the owners of the land to be annexed and owns 100 percent of the land to be annexed, which is 100 percent of the assessed value of the territory.

State law (ORS 222.111 to 222.180) was amended in 2016 through Senate Bill 1573 to prohibit cities that have voter approved annexation from submitting an annexation decision to the voters if all of the owners of the property proposed to be annexed have submitted the annexation petition. The law further specifies that in order for the voter approval prohibition to apply, the territory proposed for annexation must be included within an urban growth

boundary, be subject to an acknowledged comprehensive plan upon annexation, be contiguous to the city limits, and the proposal shall comply with all other requirements of the city's ordinances. The City of Corvallis filed a legal challenge to the new law asserting, among other challenges, that the law violates the home rule authority of cities. The circuit court rejected Corvallis's arguments, and dismissed the claims. That decision is currently on appeal to the Oregon Court of Appeals. The parties are currently filing their briefs on the issues, and a decision from the Court is not expected in the immediate future.

This annexation is subject to SB 1573 because all the owners of the property have applied for annexation.

The law prohibits a city only from referring the question of annexation to voters, but does not mandate a city to annex a property simply because a petition has been received. The city council, as the governing body, retains ultimate authority of whether to annex a property.

2. The territory consists of one parcel with no structures.
3. The territory is inside the Urban Growth Boundary (UGB) and contiguous on the west and south to the city limits and property that is zoned City of Salem RM2 (Multiple Family Residential 2) and RS (Single Family Residential). It abuts properties on the east that are zoned Marion County UT-20-IND (Urban Transition - 5 Acres - Industrial). The territory has frontage on Hazelgreen Road NE. Adjacent properties on the north side of Hazelgreen Road NE are zoned Marion County UT-5 (Urban Transition - 5 Acres).
4. The SACP Map designates the Territory as "Industrial."

The petitioner is requesting that the designation be changed to "Parks, Open Space, and Outdoor Recreation" upon annexation. [Please note that the Planning Commission recommendation refers to the designation as "Community Services - Parks, Open Space, and Outdoor Recreation." In preparing the materials for the Planning Commission hearing, staff misinterpreted the name of the designation in the Municode version of SRC Chapter 260, Table 260-1, which lists "Community service parks, open space and outdoor recreation" as a single SACP designation. Previous versions of Table 260-1 list "Community Service" on one line and "Parks, Open Space, and Outdoor Recreation" on a separate line. The correct designation according to the SACP document and map is "Parks, Open Space, and Outdoor Recreation."]

The SACP designations for the surrounding area are:

North:	Across Hazelgreen Road NE, "Developing Residential"
South:	"Multi-Family Residential" and "Single-Family Residential"
West:	"Multi-Family Residential"
East:	"Industrial"

The "Parks, Open Space, and Recreation" designation is implemented in the City through the P (Public) zones.

The Territory is currently zoned Marion County UT-20-IND (Urban Transition - 20 Acre - Industrial). The petitioner is requesting that the zoning be changed to PA (Public Amusement).

Surrounding properties are zoned as follows:

North: Across Hazelgreen Road NE, Marion County UT-5 (Urban Transition - 5 Acres)  
South: RM2 (Multiple Family Residential 2) and RS (Single Family Residential)  
West: RM2 (Multiple Family Residential 2)  
East: Marion County UT-20-IND (Urban Transition - 20 Acre - Industrial)

5. Under SRC 260.045, territory annexed into the City is automatically given the Salem Area Comprehensive Plan and zoning designations that are equivalent to the applicable county zoning designations in Table 260-1, unless the petitioner or City Council proposes a new Comprehensive Plan/zone designation.

In Table 260-1, the designations equivalent to the county zoning of UT-20-IND would be "Developing Residential" in the SACP and RA (Residential Agriculture) or RS (Single Family Residential) zoning. The "Developing Residential" designation in Table 260-1 is inconsistent with the current SACP designation of "Industrial."

The petitioner has proposed a Comprehensive Plan change to "Parks, Open Space, and Outdoor Recreation" and a zone change to PA (Public Amusement) to accommodate future development of a City park.

For annexations that propose a change in the comprehensive plan designation or a zoning designation that is different from the equivalent zoning designation set forth in Table 260-1, SRC 260.045(b) provides that the Planning Commission shall hold a public hearing to review the proposed designations, and shall make recommendation to the Council whether to adopt the proposed designation, the equivalent designation, or a different designation. The Planning Commission's review shall determine whether the proposal meets the following criteria:

- (A) The comprehensive plan and zone designation provides for the logical urbanization of land;
- (B) The comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;
- (C) Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and

(D) It is in the public interest that the proposed change be made.

The Planning Commission held a public hearing on July 23, 2019 to review the proposed designations. After receiving the staff report and public testimony, the Planning Commission found that the proposal met the applicable criteria and voted to recommend that Council approve the petitioner-initiated Comprehensive Plan change and zone change. The Planning Commission recommendation and findings of compliance with the applicable criteria are set forth in Attachment 3.

5. Public and Private Facilities and Services Comments

- A. The territory will be withdrawn from Marion County Fire District #1 upon annexation. The Salem Fire Department submitted comments indicating that the response time to this location is approximately six minutes 51 seconds from receipt of call. Primary fire protection and EMS service would be provided from Fire Station No. 8 located at 4000 Lancaster Drive NE (Attachment 4).
- B. The Salem Police Department received notice of the proposal and submitted no comments.
- C. The Development Services Section of the Public Works Department submitted comments (Attachment 5) stating that the territory is located outside the Urban Service Area (USA). An Urban Growth Area Development Permit would be required if the applicant proposes to develop the property as defined in SRC Chapter 200.
- D. The Finance Division submitted comments regarding property tax limits, rates and other information related to the financial impacts of annexation (Attachment 6).
- E. Salem-Keizer School District received notice of the proposal and commented that the territory is served by Clear Lake Elementary School, Whiteaker Middle School, and McNary High School.

6. Neighborhood Association and Citizen Comments

The City notified the Northgate Neighborhood Association (Northgate) of the proposed annexation. No comments were submitted by the Neighborhood Association for the annexation hearing. Northgate's comments regarding the proposed land use designations are summarized in Attachment 3.

Staff has not received any written citizen comments regarding the annexation hearing. Citizen comments and testimony regarding the proposed land use designations are summarized in Attachment 3.

7. Salem Revised Code (SRC) 260.060(c) requires the Council to determine whether or not the proposed annexation meets the following criteria:
- (1) The proposed land use designations are consistent with the Salem Area Comprehensive Plan and applicable Statewide Planning Goals;
  - (2) The annexation will result in a boundary in which services can be provided in an orderly, efficient, and timely manner;
  - (3) The uses and density that will be allowed can be served through the orderly, efficient and timely extension of key urban facilities and services;
  - (4) The public interest would be furthered by the referral of the annexation to the voters.
  - (5) For annexations that propose a change in the comprehensive plan designation or a zoning designation that is different from the equivalent zoning designation set forth in Table 260-1, that
    - (A) The comprehensive plan and zone designation provides for the logical urbanization of land;
    - (B) The comprehensive plan and zone designation is compatible with development patterns in the nearby vicinity;
    - (C) Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate; and
    - (D) It is in the public interest that the proposed change be made.

Attachment 2, Exhibit C contains findings demonstrating compliance with these criteria. In regard to the "public interest" criterion, because the annexation will not be referred to the voters, this criterion is not directly applicable. However, staff's proposed findings under this criterion conclude that the annexation itself is consistent with the Comprehensive Plan and would further the public interest.

8. As demonstrated by the Facts and Findings and the findings found in Attachment 2, Exhibit C, the proposed annexation and service district withdrawal conform to State law requirements and the criteria found in SRC 260.060(c). The annexation and application of City zoning of the Territory are consistent with the public interest.

For these reasons, staff recommends that the City Council:

1. Find that the Petitioners have signed a valid triple majority petition for annexation of the Territory, in conformance with Oregon Revised Statutes (ORS) Chapter 222;

2. Determine that Annexation Case No. ANXC-735 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2019-8 ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) map designation of the Territory from "Industrial" to "Parks, Open Space, and Outdoor Recreation";
4. Change the zoning from Marion County UT-20-IND (Urban Transition - 20 Acre - Industrial) to City of Salem PA (Public Amusement); and
5. Withdraw the Territory from Marion County Fire District #1.

## **BACKGROUND:**

On March 5, 2019, Toni Whitler of City of Salem Public Works submitted an annexation application and valid triple-majority annexation petition signed by City Manager Steven D. Powers on behalf of the property owner and petitioner, the City of Salem, and paid the filing fee.

This petition has been scheduled for a public hearing before the City Council for August 26, 2019. Notice of the public hearing was duly mailed to those entitled to notice at least 10 days before the hearing in accordance with SRC 260.060(b) and published once a week for two successive weeks prior to the day of the hearing and posted in four public places for a like period in accordance with ORS Chapter 222.

Pamela Cole  
Planner II

## **Attachments:**

1. Vicinity Map
2. Order No. 2019-8 ANX Adopting the Final Decision and Findings of Compliance
3. Planning Commission Recommendation on Land Use Designations
4. Fire Department Comments
5. Public Works Department Development Services Section Comments
6. Finance Division Comments