

ORDINANCE BILL NO. 7-24

AN ORDINANCE VACATING A PUBLIC SANITARY SEWER EASEMENT LOCATED NEAR ORCHARD HEIGHTS ROAD NW AND LINWOOD STREET NW

*The City of Salem ordains as follows:*

**Section 1. Findings.**

(a) On May 13, 2024, Council accepted a petition from Bonaventure Development to vacate a public sanitary sewer easement located north of Orchard Heights Road NW and west of Linwood Street NW, more particularly described as:

Beginning at a point that lies North 00°19'27" West 7.50 feet from the most southerly southwest corner of Parcel 3 of Partition Plat 2012-0012, a Partition Plat of record located in the west half of Section 16, Township 7 South, Range 3 West of the Willamette Meridian, Polk County, City of Salem, Oregon as Polk County Survey File Number 15599, said point also being on the east line of that tract of land conveyed to Michael J and Janine A Kotek as recorded in Polk County deed records #2005-4825; thence North 00°19'27" West 15.00 feet along the common line to a point; thence South 89°31'09" East 319.39 feet to a point on the westerly Right-of-Way line of Linwood Street NW; thence along said Right-of-Way line Along the arc of a 380.39 foot radius curve to the right 17.41 feet, the long chord of which bears South 30°58'08" West 17.41 feet, to a point; thence leaving said Right-of-Way line North 89°31'09" West 310.35 feet to the Point of Beginning. Containing 4,723 square feet more or less.

The Basis of bearings for the above-described property is based on Partition Plat 2012-0012, a Partition Plat of record as Polk County Survey File Number 15599.

(b) A public hearing before the City Council to consider the vacation was set for May 28, 2024, and notice of the hearing was provided as required by Oregon Revised Statutes (ORS) 271.110 and Salem Revised Code (SRC) 255.065.

(c) A public hearing before the City Council was held on May 28, 2024, at which time interested persons were afforded the opportunity to present evidence and provide testimony in favor of, or in opposition to, the proposed vacation. Upon consideration of such evidence and testimony and after due deliberation, the City Council finds as follows:

1 (1) The vacation will not substantially impact the market value of abutting properties  
2 such that damages would be required to be paid pursuant to ORS 271.130; any impact  
3 would be to increase the market value of abutting properties.

4 (2) The vacation is consistent with SRC 255.065 and complies with Section  
5 255.065(b)(6) which establishes the criteria listed below for approving a right-of-way  
6 vacation:

7 (A) *The area proposed to be vacated is not presently, or will not in the future be needed for*  
8 *public services, facilities, or utilities;*

9 **FINDING:** *Transportation:* The area proposed for vacation is not presently used for  
10 transportation, nor are there any transportation needs identified for this area.

11 *Utilities:* A public sanitary sewer line is located within the area proposed for vacation. As a  
12 condition of approval, the Petitioner will be required to relocate this sewer line and provide an  
13 easement for maintenance of the relocated sewer line.

14 With the condition to relocate the sanitary sewer line and provide an easement for maintenance  
15 of the relocated sewer line, the proposed vacation satisfies this criterion.

16 (B) *The vacation does not prevent the extension of, or the retention of public services, facilities,*  
17 *or utilities;*

18 **FINDING:**

19 *Transportation:* The vacation has no impact on extension or retention of transportation services.

20 *Utilities:* There is a sanitary sewer line located within the area proposed to be vacated. The  
21 Petitioner has proposed to relocate this sanitary sewer line to the north. In the new location, the  
22 sanitary sewer line will be able to provide utility service both to the subject property and to the  
23 property immediately to the west. The new location for the sanitary sewer line is incorporated  
24 into the conditions of approval for land use case SPR-ADJ-DAP-DR23-12.

25 With the condition to relocate the sanitary sewer line and provide an easement for maintenance  
26 of the relocated sewer line, the proposed vacation satisfies this criterion.

27 (C) *Public services, facilities, or utilities can be extended in an orderly and efficient manner in*  
28 *an alternate location;*

29 **FINDING:**

30 *Transportation:* The vacation has no impact on extension of transportation services.

1 *Utilities:* The sanitary sewer line that exists in this easement can be relocated in a manner that  
2 supports future extension to serve property located to the west. The requirement to relocate the  
3 sewer line and provide an easement for maintenance of the relocated sewer line are consistent  
4 with the conditions of approval for land use case SPR-ADJ-DAP-DR23-12.

5 With the condition to relocate the sanitary sewer line and provide an easement for maintenance  
6 of the relocated sewer line, the proposed vacation satisfies this criterion.

7 *(D) The vacation does not impede the future best use, development of, or access to abutting*  
8 *property;*

9 **FINDING:** The existing sanitary sewer line could support development of the abutting property  
10 to the west. Development of the abutting property will continue to be served by sanitary sewer  
11 service with the condition to relocate the existing sanitary sewer line as required by the  
12 conditions of approval for land use case number SPR-ADJ-DAP-DR23-12. With the condition  
13 to relocate the sanitary sewer line and provide an easement for maintenance of the relocated  
14 sewer line, the proposed vacation satisfies this criterion.

15 *(E) The vacation does not conflict with provisions of the Unified Development Code (UDC),*  
16 *including street connectivity standards and block lengths;*

17 **FINDING:** The vacation does not conflict with provisions of the *UDC*, including street  
18 connectivity standards and block lengths. With the condition to relocate the sanitary sewer line  
19 and provide an easement for maintenance of the relocated sewer line, the proposed vacation  
20 satisfies this criterion.

21 *(F) All required consents have been obtained;*

22 **FINDING:** The easement proposed for vacation was created through Partition Plat 2012-0012  
23 and is located on tax lot 073W16C00107. The petition submitted is to vacate a portion of the  
24 plat. ORS 271.080(2) requires that a petition to vacate a portion of a plat include the consent of  
25 the owner or owners of two-thirds in area of the property embraced within such plat or part  
26 thereof proposed to be vacated. In this case, the property located within Partition Plat 2012-0012  
27 is owned by MWSH West Salem LLC. Consent by this property owner was included with the  
28 petition. The Petition satisfies this criterion.

29 *(G) Notices required by ORS 271.080-271.130 have been duly given;*

1 **FINDING:** Notice of Public Hearing was provided as required by ORS 271.080-271.030. Notice  
2 was published in the *Statesman Journal* and posted on the right-of-way for vacation. The  
3 vacation complies with this criterion.

4 *(H) The public interest would not be prejudiced by the vacation;*

5 **FINDING:** Relocating the sanitary sewer line and providing an easement for its maintenance  
6 will serve the public interest by supporting development with urban utilities. With the condition  
7 to relocate the sanitary sewer line and provide an easement for maintenance of the relocated  
8 sewer line, the proposed vacation satisfies this criterion.

9 **Section 2. Assessment of Special Benefit.**

10 In accordance with SRC 255.065 (b)(7)(C), Council may, in its discretion, require the petitioner  
11 to pay an assessment of special benefit in an amount deemed by Council to be just and equitable.  
12 In this case, a condition of the vacation is for the Petitioner to relocate the sanitary sewer line and  
13 provide an easement for maintaining the relocated line. This condition will provide a new  
14 sanitary sewer line and a similar easement to what is being vacated. The provision of this  
15 upgraded infrastructure and replacement easement is at least an equivalent value to the easement  
16 proposed for vacation. City Council waived the assessment of special benefit as consideration for  
17 the upgraded infrastructure and replacement easement.

18 **Section 3. Vacation.** That certain property more particularly described in Section 1(a) of this  
19 Ordinance is hereby vacated, subject to the condition to relocate the sanitary sewer line and  
20 provide a utility easement for the maintenance, repair, and replacement of the relocated sanitary  
21 sewer line.

22 **Section 4. Vacation Effective Date.** Pursuant to SRC 255.065(c)(3), this vacation shall not be  
23 effective until:

24 (a) All fees have been satisfied.

25 (b) All required legal documents have been signed, filed, and if required, recorded.

26 (c) The petition has complied with all conditions attached to the vacation.

27 (d) A certified copy of this ordinance is recorded with the Polk County Clerk.

28 **Section 5. Codification.** In preparing this ordinance for publication and distribution, the City  
29 Recorder shall not alter the sense, meaning, effect, or substance of this ordinance, but within such  
30 limitations, may:

- 1 (a) Renumber sections and parts of sections of the ordinance;
- 2 (b) Rearrange sections;
- 3 (c) Change reference numbers to agree with renumbered chapters, sections, or other parts;
- 4 (d) Delete references to repealed sections;
- 5 (e) Substitute the property subsection, section, or chapter, or other division numbers;
- 6 (f) Change capitalization and spelling for the purpose of uniformity;
- 7 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 8 (h) Correct manifest clerical, grammatical, or typographical errors.

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PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:  
City Recorder  
Approved by City Attorney: \_\_\_\_\_

Checked by: Julie Hanson