

ORDINANCE BILL NO. 1-23

AN ORDINANCE VACATING CROSS STREET SE WEST OF 20TH STREET SE

The City of Salem ordains as follows:

Section 1. Findings.

(a) On October 10, 2022, Council accepted a petition from DEW Investments, LLC, to vacate Cross Street SE west of 20th Street SE, or more particularly described as:

Beginning at the northeast corner of Lot 1, Block 2 of said plat; thence along the north line of said Lot 1, North 89°19'00" West 137.16 feet to the west line of said plat; thence along said west line, North 00°33'00" West 50.05 feet to the southwest corner of Lot 3, Block 1 of said plat; thence along the south line of said Lot 3 South 89°19'00" East 137.16 feet to the west right-of-way line of 20th Street SE (30.00 feet from centerline); thence along said west right-of-way line, South 00°33'00" East 50.01 feet to the Point of Beginning.

(b) A public hearing before the City Council to consider the vacation was set for November 14, 2022, 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 November 14, 2022, 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. The public hearing was continued to December 5, 2022 and upon consideration of such evidence and testimony and after due deliberation, the City Council finds as follows:

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

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

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

1 **FINDING:** *Transportation:* The area proposed for vacation does not presently serve a
2 transportation function since the right-of-way for Cross Street SE terminates approximately 137
3 feet west of 20th Street SE.

4 *Utilities:* Notice of the proposed vacation was sent to all potentially affect public utilities. An
5 existing 15-inch sanitary sewer line is located within the area to be vacated. Vacation of this
6 right-of-way would require the provision of an easement for the construction, maintenance,
7 repair, and replacement of the utility as a condition of this vacation.

8 With the condition that an easement be provided for the existing utility, the vacation complies
9 with this criterion.

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

12 **FINDING:**

13 *Transportation:* The right-of-way to be vacated is unlikely to be extended through the existing
14 private properties to create a connection with Cross Street SE farther west.

15 *Utilities:* The 15-inch sanitary sewer line would require provision of an easement for the
16 construction, maintenance, repair, and replacement of the utility as a condition of the vacation.

17 With the condition that an easement be provided for the existing utility,
18 the vacation complies with this criterion.

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

21 **FINDING:**

22 *Transportation:* Cross Street SE does not represent a significant opportunity to extend a local
23 street due to the privately owned lots west of the area proposed for vacation.

24 *Utilities:* The 15-inch sanitary sewer line would require provision of an easement for the
25 construction, maintenance, repair, and replacement of the utility as a condition of the vacation.

26 With the condition that an easement be provided for the existing utility, the vacation complies
27 with this criterion.

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

1 **FINDING:** In its current configuration, the vacation will not impede access to abutting
2 properties. The right-of-way to be vacated does not currently function as part of the
3 transportation network. The vacation complies with this criterion.

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

6 **FINDING:** Cross Street SE does not currently function as part of the transportation network.
7 The vacation complies with this criterion.

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

9 **FINDING:** Petition-initiated vacations require the consent of 100 percent of the abutting real
10 property owners and two-thirds of the property owners within the affected area, which is defined
11 in ORS 271.080. The applicant has submitted the signed consent of abutting and affected
12 property owners and staff has determined that all of the required consents have been obtained.
13 The vacation complies with this criterion.

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

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

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

19 **FINDING:** The conditional vacation of this right-of-way would have no impact on the public
20 interest. Petitioner intends to use the area in a manner consistent with the land use abutting the
21 area to the north, west, and south. The area to be vacated effectively functions as part of the
22 surrounding property at present. The vacation complies with this criterion.

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

24 In accordance with SRC 255.065 (b)(7)(C), Council may, in its discretion, require the petitioner
25 to pay an assessment of special benefit in an amount deemed by Council to be just and equitable.
26 In this instance, DEW Investments, LLC, entered into a Purchase and Sales Agreement to
27 transfer an off-site utility easement to the City of Salem for an existing sewer line that crosses
28 their property outside of the area proposed for vacation. City Council waived the assessment of
29 special benefit as consideration for the easement.

1 **Section 3. Vacation.** That certain property more particularly described in Section 1(a) of this
2 Ordinance is hereby vacated, subject to provision of a utility easement for the construction,
3 maintenance, repair, and replacement of the existing utilities within the area to be vacated.

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

- 6 (a) All fees have been satisfied.
- 7 (b) All required legal documents have been signed, filed, and if required, recorded.
- 8 (c) The petition has complied with all conditions attached to the vacation.
- 9 (d) A certified copy of this ordinance is recorded with the Marion County Clerk.

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

- 13 (a) Renumber sections and parts of sections of the ordinance;
- 14 (b) Rearrange sections;
- 15 (c) Change reference numbers to agree with renumbered chapters, sections, or other parts;
- 16 (d) Delete references to repealed sections;
- 17 (e) Substitute the property subsection, section, or chapter, or other division numbers;
- 18 (f) Change capitalization and spelling for the purpose of uniformity;
- 19 (g) Add headings for purposes of grouping like sections together for ease of reference; and
- 20 (h) Correct manifest clerical, grammatical, or typographical errors.

21
22 PASSED by the City Council this _____ day of _____, 2023.

23 ATTEST:

24 City Recorder

25 Approved by City Attorney: _____

26
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28 Checked by: Anthony Gamallo