

1 **ORDINANCE BILL NO. 12-17**

2 AN ORDINANCE VACATING A PORTION OF ROSE GARDEN WAY NE

3 *The City of Salem ordains as follows:*

4 **Section 1. Findings.**

5 (a) On March 14, 2017, the Larry and Jeanette Epping Family Foundation submitted a petition  
6 to vacate the most southeasterly 159 feet of Rose Garden Way, more particularly  
7 described as:

8 The easterly 159 feet of Rose Garden Way, as conveyed in Volume 432, Page 602,  
9 Marion County Deed Records in the Northwest Quarter of Section 13, Township 7 South,  
10 Range 3 West, of the Willamette Meridian, City of Salem, Marion County, Oregon.

11 (b) A public hearing before the City Council to consider the vacation of the right-of-way was set  
12 for May 8, 2017, and notice of the hearing was provided as required by Oregon Revised  
13 Statutes (ORS) 271.110 and Salem Revised Code (SRC) 255.065.

14 (c) A public hearing before the City Council was held on May 8, 2017, at which time interested  
15 persons were afforded the opportunity to present evidence and provide testimony in favor of,  
16 or in opposition to, the proposed vacation, and upon consideration of such evidence and  
17 testimony and after due deliberation, the City Council finds as follows:

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

20 (2) The vacation is consistent with SRC 255.065 and complies with Section  
21 255.065(b)(6) which establishes the criteria listed below for approving a right-of-way  
22 vacation:

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

25 **FINDING: Transportation:** The unimproved right-of-way proposed to be vacated is not  
26 currently used for public transportation purposes. Because it is not needed for public  
27 transportation, it complies with this criterion.

28 **FINDING: Utilities:** Staff forwarded the petition to the relevant City Departments and Public  
29 Utilities for their review. There are no existing utilities within the area proposed for vacation.  
30 Because there are no existing utilities within it, the proposed right-of-way vacation complies

1 with this criterion.

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

4 **FINDING:** There are no adopted plans that call for the extension of new public services,  
5 facilities, or utilities, in addition to those utilities provided for in (A) above, through the proposed  
6 area to be vacated. The proposed vacation will have no effect on the provision of public utilities,  
7 services, or facilities and will not degrade transportation services or accessibility in the area.  
8 Therefore, the proposed vacation complies with this criterion.

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

11 **FINDING:** The proposed vacation provides the opportunity for the land to be developed for use  
12 as part of an affordable housing project. The proposed vacation will have no effect on the  
13 provision of services or facilities and will not degrade transportation services or accessibility in  
14 the area. Therefore, the proposed vacation complies with this criterion.

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

17 **FINDING:** The right-of-way proposed for vacation is needed to develop the site effectively  
18 without causing the site to be divided into two parts by the current right-of-way. The right-of-  
19 way requested to be vacated is an unimproved dead end with no plans or capacity to be extended.  
20 All of the abutting properties will have access to the planned public street network. Therefore,  
21 the proposed vacation complies with this criterion.

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

24 **FINDING:** The proposed vacation does not conflict with the provisions of the UDC regarding  
25 street connectivity and block lengths. The proposed vacation does not interfere in any way with  
26 the function of either Rose Garden Way NE or Portland Road NE. Therefore, the proposed  
27 vacation complies with this criterion.

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

29 **FINDING:** Petition-initiated vacations require the consent of one hundred percent of the  
30 abutting real property owners and two-thirds of the property owners within the affected area

1 which is defined in ORS 271.080. The applicant has submitted the signed consent of abutting  
2 and affected property owners and staff has determined that all of the required consents have been  
3 obtained. Therefore, the proposed vacation complies with this criterion.

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

5 **FINDING:** Notice of this public hearing was provided as required by ORS 271.080-271.030.  
6 Notice was published in the *Statesman Journal* and posted on the right-of-way for vacation.  
7 Therefore, the proposed vacation complies with this criterion.

8 (H) *The public interest would not be prejudiced by the vacation.*

9 **FINDING:** Approval of this vacation with the recommended condition is compatible and  
10 consistent with the intent, goals, and policies of the Salem TSP and the *Salem Revised Code*. In  
11 addition, this vacation supports the public interest by releasing unneeded property for future  
12 development. Therefore, the proposed vacation complies with this criterion.

13 **Section 2. Assessment of Special Benefit.** Council hereby waives the assessment of special  
14 benefit based on staff recommendation.

15 **Section 3. Vacation.** That certain property more particularly described in Section 1(a) of this  
16 Ordinance is hereby vacated.

17 **Section 4. Vacation Effective Date.** Pursuant to SRC 255.065(c)(3), this vacation shall not be  
18 effective until:(a) All fees have been satisfied.

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

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

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

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

25 (a) Renumber sections and parts of sections of the ordinance;

26 (b) Rearrange sections;

27 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;

28 (d) Delete references to repealed sections;

29 (e) Substitute the property subsection, section or chapter, or other division numbers;

30 (f) Change capitalization and spelling for the purpose of uniformity;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

(g) Add headings for purposes of grouping like sections together for ease of reference; and  
(h) Correct manifest clerical, grammatical or typographical errors.

**Section 6. Emergency Clause.** This act being necessary for the immediate preservation of the public peace, health, and safety an emergency is declared to exist, and this ordinance shall be in full force and effect from and after the date of its passage.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

City Recorder

Approved by City Attorney: \_\_\_\_\_

Checked by: J.Warncke