



**Staff Report**

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**File #:** 24-199  
**Version:** 1

**Date:** 5/28/2024  
**Item #:** 4.b.

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**TO:** Mayor and City Council  
**THROUGH:** Keith Stahley, City Manager  
**FROM:** Brian D. Martin, PE, Public Works Director

**SUBJECT:**

Public hearing regarding a petition to vacate a public sanitary sewer easement located near Orchard Heights Road NW and Linwood Street NW.

Ward(s): Ward 8  
Councilor(s): Councilor Varney  
Neighborhood(s): West Salem Neighborhood Association  
Result Area(s): Safe, Reliable and Efficient Infrastructure.

**SUMMARY:**

The City of Salem received 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. The Petitioner is seeking to relocate the existing sanitary sewer away from the building foundations to create more efficiency in the overall building layout for a new multi-family development.

**ISSUE:**

Shall City Council approve the vacation of a public sanitary sewer easement located near Orchard Heights Road NW and Linwood Street NW and waive the assessment of special benefit subject to the condition that the Petitioner relocate the sanitary sewer line and provide an easement for maintenance of the relocated line?

**RECOMMENDATION:**

Approve the vacation of a public sanitary sewer easement located near Orchard Heights Road NW and Linwood Street NW and waive the assessment of special benefit subject to the condition that the Petitioner relocate the sanitary sewer line and provide an easement for maintenance of the relocated line.

## FACTS AND FINDINGS:

Property owners may file a petition to vacate all or part of a right-of-way or a portion of a plat pursuant to *Oregon Revised Statute* (ORS) 271.080 and 271.090, and *Salem Revised Code* (SRC) 255.065. On February 16, 2024, the City of Salem received a petition from Bonaventure Development (Petitioner) to vacate the public sanitary sewer easement located north of Orchard Heights Road NW and west of Linwood Street NW. (The petition is on file in the Public Works Department.) As a reason for the vacation, the Petitioner stated that relocating the sanitary sewer away from the building foundations creates more efficiency in the overall building layout. The Petitioner indicated that this allows more units to be built, thus providing for a more cost-effective development.

This public sanitary sewer easement was created through Partition Plat 2012-0012 and is located on tax lot 073W16C00107. The legal description and map of the area proposed for vacation are included as Attachment 1. Public Works staff reviewed the petition and have determined it contains the submittal requirements and property owner consents for vacating a portion of a plat as required by SRC 255.065(b)(2)-(3) and ORS 271.080-271.230. On May 13, 2024, Council accepted the petition and directed the City Manager to set a public hearing to consider this petition-initiated vacation.

Notice of the proposed vacation of the public sanitary sewer easement was sent to all potentially affected public utilities. The City has a sanitary sewer line located within the area proposed to be vacated. As a condition of vacation, the property owner will be required to relocate the sanitary sewer line and provide an easement over the relocated sanitary sewer line. The construction of the new sanitary sewer line and the vacation of the existing easement are conditions of a land use decision issued for this property (SPR-ADJ-DAP-DR23-12). No other issues were identified with the proposed vacation.

### Approval Criteria

The *Salem Transportation System Plan* (TSP) established the goals, policies, and objectives for planning, development, and operation of the street system. SRC 255.065(b)(6) implements these goals, policies, and objectives by establishing the criteria for approving the vacation of public right-of-way. The eight criteria are listed below along with findings that detail how each criterion is met.

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

### **FINDING:**

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

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

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

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

**FINDING:**

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

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

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

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

**FINDING:**

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

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

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

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

**FINDING:**

The existing sanitary sewer line could support development of the abutting property to the west. Development of the abutting property will continue to be served by sanitary sewer service with the condition to relocate the existing sanitary sewer line as required by the conditions of approval for land use case number SPR-ADJ-DAP-DR23-12.

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

*(E) The vacation does not conflict with provisions of the Unified Development Code (UDC), including*

*street connectivity standards and block lengths;*

**FINDING:**

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

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

**FINDING:**

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

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

**FINDING:**

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

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

**FINDING:**

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

Assessment of Special Benefit

In accordance with SRC 255.065 (b)(7)(C), Council may, in its discretion, require the petitioner to pay an assessment of special benefit in an amount deemed by Council to be just and equitable. In this case, a condition of the vacation is for the Petitioner to relocate the sanitary sewer line and provide an easement for maintaining the relocated line. This condition will provide a new sanitary sewer line and a similar easement to what is being vacated. The provision of this upgraded infrastructure and replacement easement is at least an equivalent value to the easement proposed for vacation. For this reason, staff recommends that Council waive the assessment of special benefit.

**BACKGROUND:**

The Petitioner is in the process of developing a new 67-unit multi-family housing development. As part of the development approval process, the property owner applied for and received a Class 3 Site Plan Review, Class 2 Adjustment, Class 2 Driveway Approach Permit, and Class 1 Design Review (Case No. SPR-ADJ-DAP-DR23-12). Conditions 10 and 11 of the decision issued on June 7, 2023, require that the developer relocate the existing public sanitary sewer main and dedicate an easement for the new location, and that the existing public sanitary sewer easement be vacated prior to final occupancy of Buildings 2, 3, or 4.

Robert D. Chandler, PhD, PE  
Assistant Public Works Director

**Attachments:**

1. Attachment 1 - Legal Description and Map