

## Legislation Details (With Text)

**File #:** 19-554      **Version:** 1

**Type:** Public Hearings      **Status:** Agenda Ready

**In control:** City Council

**On agenda:** 12/9/2019      **Final action:** 12/9/2019

**Title:** Petitioner-Initiated Annexation of Territory Located at 4696 Center Street NE and 592 Hile Lane NE - 97301 (Annexation Case No. C-736)

Ward(s): 6  
Councilor(s): Hoy  
Neighborhood(s): ELNA

**Sponsors:****Indexes:****Code sections:**

**Attachments:** 1. Vicinity Map, 2. Order No. 2019-16 ANX Adopting the Final Decision, 3. Planning Commission Recommendation on Land Use Designations, 4. Fire Department Comments, 5. Public Works Department Development Services Section Comments, 6. Public Works Department Parks Comments, 7. Finance Division Comments, 8. Salem-Keizer School District Comments, 9. Citizen Comments Received After the Planning Commission Hearing, 10. Written Testimony received, 11. Written Testimony received by 5:00 p.m. 12-9-19

Date	Ver.	Action By	Action	Result
12/9/2019	1	City Council	approved on Public Hearing	Pass

**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

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

**SUBJECT:**

Petitioner-Initiated Annexation of Territory Located at 4696 Center Street NE and 592 Hile Lane NE - 97301 (Annexation Case No. C-736)

Ward(s): 6  
Councilor(s): Hoy  
Neighborhood(s): ELNA

**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-736 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2019-16 ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) map designation of the southern part of the Territory (592 Hile Lane NE and Marion County Assessor Map and Tax Lot 072W29BC03801) from "Developing Residential" to "Multi- Family Residential";
4. Change the zoning of the Territory from Marion County UD (Urban Development) to City of Salem RM-II (Multiple Family Residential II); and
5. Withdraw the Territory from Marion County Fire District #1 and the East Salem Sewer and Drainage District?

### **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-736 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2019-16 ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) map designation of the southern part of the Territory (592 Hile Lane NE and Marion County Assessor Map and Tax Lot 072W29BC03801) from "Developing Residential" to "Multi- Family Residential";
4. Change the zoning of the Territory from Marion County UD (Urban Development) to City of Salem RM-II (Multiple Family Residential II); and
5. Withdraw the Territory from Marion County Fire District #1 and the East Salem Sewer and Drainage District.

### **SUMMARY:**

This is a petitioner-initiated annexation of a 5.04-acre territory comprised of 4 tax lots at 4696 Center Street NE and 592 Hile Lane NE with a concurrent comprehensive plan change from "Developing Residential" to "Multi-Family Residential" for the southern area of the territory (592 Hile Lane NE and Marion County Assessor Map and Tax Lot 072W29BC03801), a zone change from Marion County UD (Urban Development) to RM-II (Multiple Family Residential II) for the entire territory, and withdrawal from the Marion County Fire District #1 and East Salem Sewer & Drainage District for the entire territory. A vicinity map is included as Attachment 1. A territory map and legal description are included in Attachment 2, Exhibit B.

### **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 owners, Brent Malcom, Arlena Malcom, and Center Street Holding LLC (Hans Thygeson), filed an application and petition for annexation of property approximately 5.04 acres in area.

The Territory consists of four tax lots: Marion County Assessor Map and Tax Lots 072W29BB03100, 072W29BB03200, 072W29BC03600, and 072W29BC03801. The owners 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 owners of the petitioned property represent 100 percent of the owners of the land to be annexed and own 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 Court has issued a decision.

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 four tax lots. A single family dwelling and accessory structures are located at 592 Hile Lane NE, and an accessory structure is located at 4696 Center Street NE.
3. The territory is inside the Urban Growth Boundary (UGB) and contiguous on the north and east to the city limits. It abuts properties on the east that are zoned City of Salem RS (Single Family Residential) and on the south and west that are zoned Marion County UD (Urban Development). The territory has frontage on Center Street NE. Adjacent properties on the

north side of Center Street NE are zoned City of Salem RS (Single Family Residential).

4. The SACP Map designates the northern area of the Territory as "Multi-Family Residential" and the southern area as "Developing Residential." The petitioner is requesting that the designation of the southern area be changed to "Multi-Family Residential" upon annexation.

The SACP designations for the surrounding area are:

North: Across Center Street NE, "Developing Residential" and "Single Family Residential"

South: "Developing Residential"

East: "Single Family Residential"

West: "Multi-Family Residential" and "Developing Residential"

The "Multi-Family Residential" designation is implemented in the City through the RD (Duplex Residential), RM-I (Multiple Family Residential I), RM-II (Multiple Family Residential II), and RH (Multiple Family High-Rise Residential) zones.

The Territory is currently zoned Marion County UD (Urban Development). The petitioner is requesting that the zoning be changed to RM-II (Multiple Family Residential II).

Surrounding properties are zoned as follows:

North: Across Center Street NE, RS (Single Family Residential)

South: Marion County UD (Urban Development)

East: RS (Single Family Residential) and Marion County UD (Urban Development)

West: Marion County UD (Urban Development)

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 or the equivalent city designation in Table 260-1 is inconsistent with the Salem Area Comprehensive Plan.

The northern part of the annexation territory (4696 Center Street NE and tax lot 072W29BB03100) is currently zoned Urban Development (UD) in Marion County and designated "Multi-Family Residential" in the Salem Area Comprehensive Plan map. The southern part of the annexation territory (592 Hile Lane NE and tax lot 072W29BC03801) is currently zoned Urban Development (UD) in Marion County and designated "Developing Residential" in the Salem Area Comprehensive Plan map.

In Table 260-1, there is no equivalent city zoning designation for the northern area of the territory with current Marion County UD (Urban Development) zoning designation and "Multi-Family Residential" comprehensive plan designation. The current Marion County UD zone is inconsistent with the current "Multi-Family Residential" comprehensive plan designation. For the northern area of the territory, the applicant is requesting a change in the zoning to RM-II

(Multiple Family Residential), which is consistent with the current comprehensive plan designation.

In Table 260-1, the equivalent city zoning designation would be RA (Residential Agriculture) or RS (Single Family Residential) for the southern area of the territory with current Marion County UD (Urban Development) zoning designation and "Developing Residential" comprehensive plan designation. For the southern area of the territory, the applicant is requesting a new comprehensive plan designation of "Multi-Family Residential" and a new zoning designation of RM-II (Multiple Family Residential), which is consistent with the proposed comprehensive plan designation.

For annexations that propose a change in the comprehensive plan designation or zoning 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 August 6, 2019 to review the proposed designations. After receiving the staff report and public testimony, the Planning Commission granted a request to hold the record open for an additional seven days, allow an additional seven days for parties to respond to testimony submitted during that period, and allow an additional seven days for the applicant to rebut the testimony. On September 3, 2019, the Planning Commission granted the applicant's request to postpone deliberations, re-open the public hearing, and continue the public hearing to October 1, 2019. On October 1, 2019, the Planning Commission received testimony and granted the applicant's request for an additional seven days to submit final argument. On October 15, 2019, the Planning Commission held deliberations and voted unanimously to recommend that Council approve the requested Comprehensive Plan and zoning designations. 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 five minutes 8 seconds from receipt of call. Primary fire protection and EMS service would be provided from Fire Station No. 10 located at 3611 State Street (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 inside the Urban Service Area (USA) and adequate facilities are available. An Urban Growth Area Development Permit would not be required if the applicant proposes to develop the property as defined in SRC Chapter 200.
- D. The Parks staff of the Public Works Department submitted comments (Attachment 6) stating that no land for parks would be required from the annexation and no pedestrian access to parks would be required.
- E. The Finance Division submitted comments regarding property tax limits, rates and other information related to the financial impacts of annexation (Attachment 7).
- F. Salem-Keizer School District received notice of the proposal and provided comments (Attachment 8) indicating that residential development of the territory could add 24 students to Auburn Elementary, 9 students to Houck Middle School, and 10 students to North Salem High School. The estimated cost of new school facilities to serve these students would be \$2,626,245.

## 6. Neighborhood Association and Citizen Comments

The City notified the East Lancaster Neighborhood Association (ELNA) of the proposed annexation. ELNA's comments and testimony to the Planning Commission regarding the proposed land use designations are summarized in Attachment 3. No additional comments were submitted by the Neighborhood Association prior to the deadline for preparation of this report.

Citizen comments and testimony to the Planning Commission regarding the proposed land use designations are summarized in Attachment 3. After the Planning Commission hearing was closed on October 1, and prior to the deadline for preparation of this report, staff received several emails (Attachment 9):

- One citizen disputed the applicant's comment that 12 residents of the adjacent manufactured home subdivision had no problem with the planned development and stated that only three people had signed the applicant's petition. The citizen provided a poll showing that three residents were in support, 12 were opposed, two did not care, and six persons' opinions were unknown.

**Staff Response:** Staff responded by email that the applicant had testified that he had met with 12 people, and 10 were in support or not objecting.

- The citizen provided an updated poll indicating that five residents of the adjacent manufactured home subdivision were in support, 11 were opposed, two did not care, and four persons' opinions were unknown.
- One citizen commented that she recalled that the applicant said that when he met with 12 people, 10 were in support or not objecting.

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-736 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2019-16 ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) map designation of the southern part of the Territory (592 Hile Lane NE and Marion County Assessor Map and Tax Lot 072W29BC03801) from "Developing Residential" to "Multi- Family Residential";
4. Change the zoning of the Territory from Marion County UD (Urban Development) to City of Salem RM-II (Multiple Family Residential II); and
5. Withdraw the Territory from Marion County Fire District #1 and the East Salem Sewer and Drainage District.

## **BACKGROUND:**

On March 27, 2019, Steve Kay of Cascadia Planning and Development Services submitted an annexation application signed by applicant Creations Northwest LLC (Hans Thygeson), Brent Malcom, and Arlena Malcom and a valid triple-majority annexation petition signed by property owners and petitioners, Center Street Holding LLC (Hans Thygeson), Brent Malcom, and Arlena Malcom. On the same date, Center Street Holding LLC paid the filing fee.

This petition has been scheduled for a public hearing before the City Council for December 9, 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. 2019-16 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. Public Works Department Parks Comments
7. Finance Division Comments
8. Salem-Keizer School District Comments
9. Citizen Comments Received After the Planning Commission Hearing