



## Staff Report

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**File #:** 16-378

**Version:** 2

**Date:** 1/9/2017

**Item #:** 7.2a.

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**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Peter Fernandez, PE, Public Works Director

### **SUBJECT:**

Proposed engrossed ordinance bill No. 24-16 vacating of a portion of right-of-way for Liberty Road S south of the intersection with Rainier Drive SE and declaring an emergency

Ward(s): 4

Councilor(s): McCoid

Neighborhood(s): South Gateway NA

### **ISSUE:**

Shall City Council engross ordinance bill No. 24-16 and conduct second reading of the ordinance bill, which vacates an easterly portion of the right-of-way for Liberty Road S south of the intersection with Rainier Drive SE, subject to the condition that an easement be reserved for the construction, maintenance, repair, and replacement of municipal and utility facilities, and declares an emergency?

### **RECOMMENDATION:**

Engross ordinance bill No. 24-16 and conduct second reading of the ordinance bill, which vacates an easterly portion of the right-of-way for Liberty Road S south of the intersection with Rainier Drive SE, subject to the condition that an easement be reserved for the construction, maintenance, repair, and replacement of municipal and utility facilities, and declares an emergency.

### **SUMMARY AND BACKGROUND:**

On March 28, 2014, the Planning Administrator approved the tentative plan for Subdivision Case No. SUB 14-03, which divided approximately 15 acres into 69 residential lots located at 5782 and 5792 Liberty Road S and 237 Rainier Drive SE. The developer, Rainier Estates II LLC, inadvertently built improvements that intrude into old Liberty Road S right-of-way in the area described in the attached property description and map (Attachment 2). Staff has determined that the small sliver of right-of-way affected is not needed by the City for existing or future transportation needs, provided an

easement is retained for construction, maintenance, repair, and replacement of municipal and utility facilities. In order to allow the development to go forward in a timely manner, staff recommends that Council approve the vacation and declare an emergency regarding the affected right-of-way.

## **FACTS AND FINDINGS:**

On November 14, 2016, the City Council adopted resolution No. 2016-49 that initiated vacation of an easterly portion of the right-of-way for Liberty Road S south of the intersection with Rainier Drive SE.

Notice of the proposed vacation was provided to relevant City departments and private utility providers. Staff has received input that there are existing facilities located within the area proposed for vacation, including stormwater and Century Link facilities, resulting in a need for a permanent easement to accommodate these facilities. Therefore, staff recommends a condition be applied to this vacation to reserve an easement. Additionally, staff recommends that the vacation be effective immediately upon passage and recordation.

On December 5, 2016, City Council held a public hearing on the proposed vacation, during which no members of the public testified. Following the public hearing, City Council conducted first reading of Ordinance Bill No. 24-16. Following the first reading, the legal description of the area proposed to be vacated was refined to reduce the amount of land to be vacated so that the sidewalk would remain within public right-of-way. This smaller area is reflected in the proposed engrossed ordinance bill. With the refined legal description, the sidewalk will remain fully within public right-of-way, therefore a public access easement is no longer recommended.

## **Criteria for Evaluating Proposed Vacation of Rights-of-Way**

Vacation of public rights-of-way in the City of Salem are governed by State law (ORS Chapter 271) and SRC 255.065. The vacation shall be approved only if the vacation meets the following requirements:

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

Transportation: The area proposed to be vacated abuts Liberty Road S and Rainier Drive SE. Liberty Road S is designated a major arterial street in the Salem Transportation System Plan with an ultimate right-of-way width of 96 feet. With this vacation, there will remain 48 feet of right-of-way from the centerline of Liberty Road S, allowing for future transportation needs.

Utilities: Certain utilities are located within the area proposed for vacation, including stormwater and Century Link facilities. The provision of these utilities can be accommodated with an easement for construction, maintenance, repair, and replacement of existing municipal and utility facilities.

The proposed right-of-way vacation complies with this criterion with the condition to reserve an

easement for construction, maintenance, repair, and replacement of existing municipal and utility facilities.

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

There are no adopted plans that call for the extension of new public services, facilities, or utilities through the area proposed to be vacated. With the provision of an easement for construction, maintenance, repair, and replacement of existing municipal and public utilities, the proposed vacation will have no effect on the provision of public utilities, services, or facilities. Therefore, the proposed vacation complies with this criterion.

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

The intersection at Liberty Road S and Rainier Drive SE has been completed; it includes a travel lane, bicycle lane, shoulder, and sidewalk. The right-of-way proposed for vacation is not needed to provide for the efficient extension of future public services, facilities, or utilities to the area. Therefore the proposed vacation complies with this criterion.

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

The current property owner abutting the right-of-way, Rainier Estates LLC, has already developed the subdivision that abuts the right-of-way to be vacated. Therefore the proposed vacation satisfies this criterion.

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

The proposed vacation does not conflict with the provisions of the UDC regarding street connectivity and block lengths. The right-of-way to be vacated is not required to maintain the intersection of Liberty Road S and Rainier Drive SE, and the block length is not affected. Therefore, the proposed vacation complies with this criterion.

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

Consents are not required for a Class 2, City-initiated vacation.

*(g) Notices required by ORS 271.080-270.130 have been duly given; and*

Notice was submitted to the *Statesman Journal* for publication on Monday, November 21, 2016, and Thursday, December 1, 2016. Notice was also posted at each end of the area to be vacated.

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

The proposed vacation satisfies this criterion.

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

**Attachments:**

1. Proposed Engrossed Ordinance Bill No. 24-16
2. Property Description and Map

12/06/2016