



## Staff Report

**File #:** 17-120

**Version:** 1

**Date:** 3/27/2017

**Item #:** 4.b.

**TO:** Mayor and City Council  
**THROUGH:** Steve Powers, City Manager  
**FROM:** Glenn W. Gross, Community Development Director

### **SUBJECT:**

Petitioner-Initiated Annexation of Territory Located at 3652 and 3672 Maly Place SE (Annexation Case No. C-719)

Ward(s): 2  
Councilor(s): Andersen  
Neighborhood(s): SESNA

### **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 the Petition satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2017-01-ANX (Attachment 2);
3. Apply the City of Salem RS (Single Family Residential) zone to the Territory from Marion County RS (Single Family Residential); and
4. Withdraw the Territory from Marion County Fire District #1, the East Salem Service District, and the Suburban East Salem Water 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 the Petition satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2017-01-ANX (Attachment 2);

3. Apply the City of Salem RS (Single Family Residential) zone to the Territory from Marion County RS (Single Family Residential); and
4. Withdraw the Territory from Marion County Fire District #1, the East Salem Service District, and the Suburban East Salem Water District.

### **SUMMARY AND BACKGROUND:**

This is a petitioner-initiated annexation of a 0.28-acre territory located at 3652 and 3672 Maly Place SE. A vicinity map is included as Attachment 1.

On March 8, 2016, property owners Hallie Wolf and Prentice Wolf submitted an application for annexation, paid the filing fee, and submitted a valid triple-majority annexation petition (Attachment 3). On April 20, 2016, the Public Works Department issued sewer permits to John R. Davenport for proposed dwellings at for the property, which is located in the East Salem Sewer District and Suburban East Salem Water District. On May 2, 2016, the Wolfs sold the subject property to John R. Davenport and Patricia S Davenport. On July 8, 2016, staff notified the Davenports that a revised annexation petition would be required to complete the annexation. On July 15, 2016, John R. Davenport paid systems development charges for the sewer permits. On August 4, 2016, John R. Davenport and Patricia S. Davenport submitted a valid triple-majority annexation petition.

Council held a public hearing on the petition on February 27, 2017 and no testimony was received. Council discussed the effect of Senate Bill 1573 (2016), which prohibits cities with voter approved annexation from referring certain property owner initiated annexations to the voters. Council discussed whether this annexation should be referred to the voters and the litigation involving the City of Corvallis and the State of Oregon regarding the constitutionality of Senate Bill 1573. Council determined that it should wait until the trial court issued a decision in that case before reaching a decision in this annexation.

Council then closed the public hearing, and decided to continue the matter for deliberations until March 27, 2017. After the hearing, the trial court's decision in the City of Corvallis case was announced. The court determined that Senate Bill 1573 complied with the Oregon Constitution, and did not violate the home rule authority of the city. It is likely that Corvallis will appeal the decision, however, resolution of any appeal likely will not occur for several months.

### **FACTS AND FINDINGS:**

1. The Petitioner has 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 filed the application and petition for annexation of the subject property which is approximately 0.28 acres in area (the "Territory").

The Territory consists of two parcels under common ownership. The owners have 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.

Senate Bill 1573.

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.

This annexation is subject to SB 1573 because all the owners of the property have applied for annexation.

The law, while not a model of clarity, appears to only prohibit cities 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.

The annexation is subject to the requirements of Senate Bill 1573, and may not be referred to the voters for approval as set forth below:

- (1) The territory is within the Salem Urban Growth Boundary (UGB).
- (2) The territory is currently subject to the acknowledged Salem Area Comprehensive Plan, and will continue to be subject to the Plan upon annexation.
- (3) The territory is contiguous to the city limits.
- (4) The proposal conforms to all other requirements of the city's ordinances, as demonstrated in the findings below.

## 2. The territory consists of two parcels which are being developed with single family dwellings

for which permits to connect to City sewer were issued in April 2016 and July 2016. Because the territory is located within the East Salem Sewer District and East Salem Water District, city water and sewer service can be provided to the property upon filing of a complete application for annexation.

3. The territory is contiguous on the north and west to properties zoned City of Salem RA (Residential Agriculture) and on the east and south to properties zoned Marion County RS (Single Family Residential). The territory obtains access to 37th Avenue SE via a flag lot accessway (Maly Place SE) that crosses property at 195 37th Avenue SE.
4. 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, unless the petitioner or City Council propose a new Comprehensive Plan/zone designation.

The property owners of the territory have not proposed a new Comprehensive Plan or zone designation, and unless the City Council proposes a different designation, the City equivalent Comprehensive Plan designation of Single-Family Residential and RS zone will be applied to the territory.

5. Public and Private Facilities and Services Comments
  - A. The Public Works Department has reviewed the proposal and submitted a memorandum regarding parks (Attachment 4).
  - B. 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 2 minutes depending on road conditions, traffic, and similar variables. Primary fire protection and EMS service would be provided from Fire Station No. 10 located at 3611 State Street (Attachment 5).
  - C. The Salem Police Department reviewed the proposal and had no comments.
  - D. The Development Services Section of the Public Works Department submitted comments (Attachment 6) stating that the territory is located inside the Urban Service Area (USA) and no Urban Growth Area Development Permit is required if the applicant proposes to develop the property as defined in SRC Chapter 200.005(e).
  - E. The Administrative Services Department, 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 reviewed the proposed annexation and submitted

comments (Attachment 8). The Salem-Keizer School District estimates that the proposed annexation would add one additional student, assuming the property redevelops at densities allowed in the requested zones. The annexation would create an estimated short term cost to the District for new facilities, beyond current capacity, due to change in enrollment, of \$0.

6. Neighborhood Association and Citizen Comments

The City notified the Southeast Salem Neighborhood Association (SESNA) of the proposed annexation. No comments were submitted by the Neighborhood Association.

Staff has not received any written citizen comments regarding the annexation.

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.

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 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 conforms 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-719 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2017-01-ANX (Attachment 2).
3. Apply the City of Salem RS (Single Family Residential) zone to the territory from Marion County RS (Single Family Residential).
4. Withdraw the Territory from Marion County Fire District #1, East Salem Service District, and Suburban East Salem Water District.

Pamela Cole  
Planner II

**Attachments:**

1. Vicinity Map
2. Order No. 2017-01-ANX Adopting the Final Decision and Findings of Compliance
3. Annexation Petition (Hallie Wolf and Prentice Wolf)
4. Public Works Department Parks Comments
5. Fire Department Comments
6. Public Works Department Development Services Section Comments
7. Finance Division Comments
8. Salem-Keizer School District Comments