



## Staff Report

**File #:** 18-237

**Version:** 1

**Date:** 6/11/2018

**Item #:** 4.a.

**TO:** Mayor and City Council  
**THROUGH:** Steve Powers, City Manager  
**FROM:** Norman Wright, Community Development Director

### **SUBJECT:**

Petitioner-Initiated Annexation of Territory Located at 6719 Devon Avenue SE - 97306 (Annexation Case No. C-725)

Ward(s): 4

Councilor(s): McCoid

Neighborhood(s): South Gateway

### **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. 2018-03-ANX (Attachment 2);
3. Apply the City of Salem RS (Single Family Residential) zone to the Territory from Marion County UT-10 (Urban Transition 10 Acres); and
4. Withdraw the Territory from Salem Suburban Rural Fire Protection 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. 2018-03-ANX (Attachment 2);

3. Apply the City of Salem RS (Residential Agriculture) zone to the Territory from Marion County UT-10 (Urban Transition 10 Acres); and
4. Withdraw the Territory from Salem Suburban Rural Fire Protection District.

## **SUMMARY AND BACKGROUND:**

This is a petitioner-initiated annexation of a 20.35-acre territory located at 6719 Devon Avenue SE, including approximately 19.74 acres of private property and 0.61 acres of right-of-way. A vicinity map is included as Attachment 1.

On November 7, 2017, Brandie Dalton of Multi/Tech Engineering Services, Inc., submitted an annexation application on behalf of the petitioner and property owner, HSF Development, LLC (Chris Jundt, Anthony R. Kreitzberg, and Kelley D. Hamilton); Bonaventure Senior Housing paid the filing fee; and the property owner submitted a valid triple-majority annexation petition.

This petition has been scheduled for a public hearing before the City Council for June 11, 2018. 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.

The applicant has also applied for an Urban Growth Area Preliminary Declaration ("UGA"). The purpose of the UGA is to identify master planned facilities (such as water lines, sewer, and streets) that will be needed as part of the eventual development of the property. The UGA decision was issued for the property earlier this year, and was appealed by the applicant.

The applicant indicated that they objected to the wording of a requirement to provide land for a City park or pay a separate fee. In addition, the applicant raised certain non-specified issues related to "needed housing." A hearing on the appeal was originally scheduled for City Council on May 29<sup>th</sup>. However, staff, with the consent of the applicant, withdrew the decision, and agreed to work with the applicant to revise the UGA requirements as they relate to parks. Staff will issue a modified decision that will be provided to City Council as an information report, and, may be reviewed by City Council, if desired.

## **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 owner filed the application and petition for annexation of the subject property which is approximately 19.74 acres. Including public right-of-way that would be annexed adjacent to the property, the "Territory" is 20.35 acres in area.

The Territory consists of one parcel. The owner has 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 owner of the petitioned property represents 100 percent of the owners of the land to be annexed and owns 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 parties are currently filing their briefs on the issues, and a decision from the Court is not expected in the immediate future.

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 one parcel with a single family dwelling.
3. The territory is contiguous on the north to properties zoned City of Salem RA (Residential Agriculture). The territory has frontage on Devon 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 Developing Residential and RS (Single Family Residential) 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 3).
- B. The territory will be withdrawn from Salem Suburban Rural Fire Protection District upon annexation. The Salem Fire Department submitted comments indicating that the response time to this location is approximately six minutes 50 seconds from time of dispatch. Primary fire protection and EMS service would be provided from Fire Station No. 7 located at 5021 Liberty Road S (Attachment 4).
- C. The Salem Police Department received notice of the proposal and submitted no comments.
- D. The Development Services Section of the Public Works Department submitted comments (Attachment 5) stating that the territory is located outside the Urban Service Area (USA) and an Urban Growth Area Development Permit is required if the applicant proposes to develop the property as defined in SRC Chapter 200.
- E. The Finance Division submitted comments regarding property tax limits, rates and other information related to the financial impacts of annexation (Attachment 6).
- F. Salem-Keizer School District reviewed the proposed annexation and submitted comments (Attachment 7). The Salem-Keizer School District estimates that the proposed annexation and future development of the property would add 38 students to the District's enrollment. The increased enrollment due to the annexation would create an estimated cost of \$2,243,283 to the School District for facilities.

6. Neighborhood Association and Citizen Comments

The City notified the South Gateway Neighborhood Association (South Gateway) 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 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-725 satisfies the criteria of Salem Revised Code (SRC) 260.060(c) and adopt Order No. 2018-03-ANX (Attachment 2).
3. Apply the City of Salem RS (Single Family Residential) zone to the territory from Marion County UT-10 (Urban Transition 10 Acres).
4. Withdraw the Territory from Salem Suburban Rural Fire Protection District.

Pamela Cole  
Planner II

**Attachments:**

1. Vicinity Map
2. Order No. 2018-03-ANX Adopting the Final Decision and Findings of Compliance
3. Public Works Department Parks Comments
4. Fire Department Comments
5. Public Works Department Development Services Section Comments
6. Finance Division Comments

7. Salem-Keizer School District Comments