



## Staff Report

**File #:** 18-248

**Version:** 1

**Date:** 6/11/2018

**Item #:** 4.b.

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

### **SUBJECT:**

Petitioner-Initiated Annexation of Territory Located at 1338 and 1340 Wallace Road NW and Land East - 97304 (Annexation Case No. C-724)

Ward(s): 1

Councilor(s): Kaser

Neighborhood(s): West Salem

### **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. 2018-02-ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) Map designation of the Territory from "Developing Residential" to "Multi-Family Residential";
4. Change the zoning from Polk County SR (Suburban Residential) to City of Salem RM2 (Multiple Family Residential 2); and
5. 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. 2018-02-ANX (Attachment 2);
3. Change the Salem Area Comprehensive Plan (SACP) Map designation of the Territory from "Developing Residential" to "Multi-Family Residential";
4. Change the zoning from Polk County SR (Suburban Residential) to City of Salem RM2 (Multiple Family Residential 2); and
5. Withdraw the Territory from Salem Suburban Rural Fire Protection District.

### **SUMMARY AND BACKGROUND:**

This is a petitioner-initiated annexation of a 0.80-acre territory located at 1338 and 1340 Wallace Road NW, including land east of those addresses. A vicinity map is included as Attachment 1. The annexation includes proposed changes to the Salem Area Comprehensive Plan Map and zoning.

On August 2, 2017, Brandie Dalton of Multi/Tech Engineering Services, Inc., submitted an annexation application on behalf of the applicant, Nathan Quarry, and property owner, Stonewell LLC (Nathan P. Quarry and Kenneth J. Birdwell); Stonewell LLC paid the filing fee; and Nathan Quarry submitted a valid triple-majority annexation petition for Stonewell LLC.

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.

### **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 0.80 acres (Attachment 2, Exhibit B). The Territory consists of three parcels.

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 three parcels, with two single family dwellings and several accessory structures.
3. The territory is contiguous on the south and east to properties zoned City of Salem RM2 (Multiple Family Residential 2) and is located inside the Urban Growth Boundary (UGB). The territory has frontage on Wallace Road NW.
4. The SACP Map designates the Territory as "Developing Residential."

The petitioner is requesting that the designation be changed to "Multi-Family Residential" upon annexation.

The "Multi-Family Residential" designation is implemented in the City through the RM1 (Multiple Family Residential 1) and RM2 (Multiple Family Residential 2) zones. The petitioner is requesting that the zoning be changed to RM2.

The Territory is currently zoned SR (Suburban Residential) in Polk County and contains two single-family dwellings and several accessory buildings.

The SACP Map designations for the surrounding area are:

North: "Multi-Family Residential"

South: "Multi-Family Residential"  
East: "Multi-Family Residential"  
West: Across Wallace Road NW, "Commercial"

The zoning and land use for the surrounding area includes:

North: Polk County SR (Suburban Residential) -- single family dwelling  
South: RM2 (Multiple Family Residential 2) - multiple dwellings  
East: RM2 (Multiple Family Residential 2) - accessory structures  
West: Across Wallace Road NW, CR (Retail Commercial) - office complex and residential care facility

4. Under SRC 260.045, land use designations, 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 petitioner has proposed a Comprehensive Plan change to "Multi-Family Residential" and a zone change to RM2 (Multiple Family Residential 2).

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, SRC 260.045(b) provides that the Planning Commission shall hold a public hearing to review the proposed designation, and shall make a 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 February 27, 2018 to review the proposed designations. After receiving the staff report and public testimony, the Planning Commission found that the proposal met the applicable criteria and voted to recommend that Council approve the petitioner-initiated Comprehensive Plan change and zone change. 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 Public Works Department has reviewed the proposal and submitted a

memorandum regarding parks (Attachment 4).

- 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 1 minute 54 seconds from time of dispatch. Primary fire protection and EMS service would be provided from Fire Station No. 5 located at 1520 Glen Creek Road NW (Attachment 5).
- 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 6) 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 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 and future development of the property would add four students to the District's enrollment. The increased enrollment due to the annexation would create an estimated cost of \$231,820 to the School District for facilities.

6. Neighborhood Association and Citizen Comments

The City notified the West Salem Neighborhood Association (West Salem) of the proposed annexation. West Salem's Land Use Chair commented that they support approval of the petitioner's applications.

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.
- (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 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 the Petition satisfies the criteria of Salem Revised Code (SRC) 260.060 (c) and adopt Order No. 2018-02-ANX (Attachment 2);
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5. Withdraw the Territory from Salem Suburban Rural Fire Protection District.

Pamela Cole  
Planner II

**Attachments:**

1. Vicinity Map
2. Order No. 2018-02-ANX Adopting the Final Decision and Findings of Compliance
3. Planning Commission Recommendation on Land Use Designations
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