

RESOLUTION 2034

A RESOLUTION OF THE CITY OF NORTH BEND, WASHINGTON, APPROVING THE REALLOCATION AND PRIORITIZATION OF NEW WATER SERVICE CONNECTIONS TO FIRST SERVE DEVELOPMENT PROJECTS WITHIN THE CITY LIMITS AND OTHERWISE WITHIN THE CITY'S WATER SERVICE AREA

WHEREAS, two public water systems currently provide water service to properties inside North Bend's municipal boundary ("City Limits") -- the water purveyor on the City's west side is the City of North Bend ("City"), and the water purveyor on the City's east side is Sallal Water Association ("Sallal"), a private non-profit association; and

WHEREAS, the City and Sallal each serve approximately 2,000 water customers, including water customers located both inside the City Limits and outside the City Limits in an unincorporated area of King County; and

WHEREAS, both the City and Sallal have separate Water Service Areas ("WSAs") as mapped in their individual City and Sallal Water System Plans ("WSPs") and which were approved separately by Washington State Department of Ecology, King County Utilities Technical Review Committee ("UTRC"), King County Council, and Washington State Department of Health ("DOH") during late 2020 and early 2021; and

WHEREAS, the City and Sallal both have a statutory duty to serve properties within their respective WSAs to the extent that each has the capacity to do so. The City's statutory duty to serve is enhanced for properties within the City Limits, as opposed to properties outside the City Limits but within the City's WSA, due to the City's full regulatory authority over properties within the City Limits; and

WHEREAS, the City's Mission Statement as adopted by the City Council includes the goal of constructing and maintaining essential infrastructure to serve its citizens, including the water system; and

WHEREAS, the City has sufficient water supply to serve its WSA, including areas both within the City Limits and outside the City Limits; and

WHEREAS, Sallal's WSA includes a substantial portion of the City's east side, including significant undeveloped commercial properties. Development of those commercial properties is a priority of the City, and remains critical to the City's economic development; and

WHEREAS, for the past several years, Sallal has proven to be incapable of serving water to those key commercial properties that lie within the eastern City Limits. Specifically, Sallal was unable to serve water: (A) in 2017, to a 218-unit residential project located north of North Bend Way (“Dahlgren Project”); (B) in 2019, to a “project of Statewide Importance” to serve the Washington National Guard located west of 468th Avenue and north of North Bend Way (“National Guard Project”); and (C) in 2022, to the proposed Alpine Crossing mixed-use (commercial and residential) project located between I-90 and North Bend Way (“Alpine Crossing Project”); and

WHEREAS, given Sallal’s demonstrated inability to satisfy its statutory duty to supply water to those commercial properties within the City Limits but also within the Sallal WSA, the City’s 2021 WSP reflects approval from multiple Washington State and King County agencies to supply water to the Dahlgren Project and the National Guard Project. The City is now providing water to the Dahlgren Project. The City is now preparing engineering plans for City water facilities to serve the National Guard Project. The City is now taking steps to serve City water to the Alpine Crossing Project; and

WHEREAS, due to Sallal’s own actions, the City Council has no basis to reasonably believe that Sallal will be able to cure its inability to provide water service to commercial and other properties within that portion of its WSA that lies within the City Limits. In particular, the Sallal Board of Directors in June 2022 imposed an emergency moratorium prohibiting any new water connections in its WSA, including new water connections inside the City Limits. Sallal indicated that the moratorium will last at least six months, but has also publicly announced that Sallal may “make the moratorium permanent until additional water rights are obtained;” and

WHEREAS, given Sallal’s demonstrated inability to currently serve water to properties within the City Limits, its indefinite moratorium, and the expensive multi-year process that Sallal must complete in order to obtain Department of Ecology approval for Sallal’s stated solution of obtaining “additional water rights,” the City Council must now take additional steps to satisfy its statutory duty to serve, and to ensure the supply of water sufficient to serve the Alpine Crossing Project and all other properties inside the City Limits that now lack access to water due to Sallal’s demonstrated inability to serve those properties; and

WHEREAS, for the past several years, well before Sallal imposed the current moratorium on new water connections, the City has repeatedly offered to execute a Water Supply Agreement with Sallal that would provide Sallal with more than sufficient additional water supply to serve its entire WSA, including the commercial properties located within the eastern portion of the City Limits; and

WHEREAS, Sallal has declined to enter into the proposed Water Supply Agreement. If Sallal would enter into the Agreement, this Resolution and subsequent City actions would be unnecessary; and

WHEREAS, the City Council must exercise its regulatory authority to protect the public health, safety, and welfare by taking actions to prioritize water availability for projects

within the City Limits until adequate water capacity is available to supply development projects in the City’s WSA but located outside the City Limits;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. City Council Findings and Statement of City Council Policy. The City Council incorporates the above “Whereas” clauses as its findings. Based on these findings, the City Council accordingly declares:

(A) The City will give priority to new water connections that serve property within the City Limits, whether within North Bend’s WSA or Sallal’s WSA;

(B) For projects outside the City Limits but within the City’s WSA, the City will provide a water connection equivalent to one Equivalent Residential Unit (ERU) for each existing tax parcel;

(C) The City will not provide water connections to projects outside of the City Limits but within Sallal’s WSA; and

(D) The Mayor is requested to prepare an ordinance for City Council consideration and action adopting this statement of City Council policy.

Section 2. If a mutually acceptable Water Supply Agreement between the City and Sallal is executed in the future, or an otherwise mutually acceptable resolution is reached between Sallal and the City, then this Resolution and any related implementing Ordinance may be evaluated by the City Council for repeal or amendment, as the Council deems appropriate.

PASSED BY THE CITY COUNCIL OF THE CITY OF NORTH BEND, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS 2ND DAY OF AUGUST, 2022.

CITY OF NORTH BEND:

APPROVED AS TO FORM:

Rob McFarland, Mayor

Lisa Marshall, City Attorney

ATTEST/AUTHENTICATED:

Effective: August 2, 2022

Posted: August 3, 2022

Susie Oppedal, City Clerk