



ORDINANCE NO. 6001

AN ORDINANCE VACATING THE WEST 150 FEET OF ELM STREET SOUTH OF TWENTY-FOURTH AVENUE AND NORTH OF CATHEY DITCH, IN ALBANY, OREGON.

WHEREAS, the notice of public hearing was mailed on September 21, 2022, published in the Albany Democrat-Herald on October 3, 2022, and October 10, 2022, and posted at the site, as described in Section 1 below, on October 10, 2022, as required by state and local law; and

WHEREAS, the Albany Planning Commission held a public hearing on October 17, 2022, and recommended that the city council approve the proposed right-of-way vacation; and

WHEREAS, the Albany City Council held a public hearing on November 9, 2022, reviewed the testimony presented at the public hearing and the findings in the staff report, and deliberated on the vacation.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: Subject Property. The westerly 33 feet of Elm Street south of Twenty-Fourth Avenue and north of Cathey Ditch (File VC-02-22) (see legal description and map on attached Exhibit A), is hereby vacated.

Section 2: Transfer of Vacated Property. The vacated right-of-way will revert to the properties west of the right-of-way.

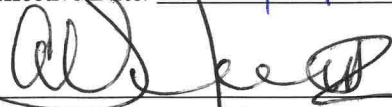
Section 3: Findings. The findings, conclusions, and conditions in the staff report are hereby adopted as the council's own as presented in Exhibit B of this ordinance.

Section 4: Easements Retained. The City retains a 33-foot public and franchise utility easement over the entire right-of-way being vacated and retains a public access easement over the full width of the right-of-way.

Passed by the Council: 11/9/2022

Approved by the Mayor: 11/9/2022

Effective Date: 12/9/2022

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk



# Exhibit A

(Legal Description of Area to be vacated)

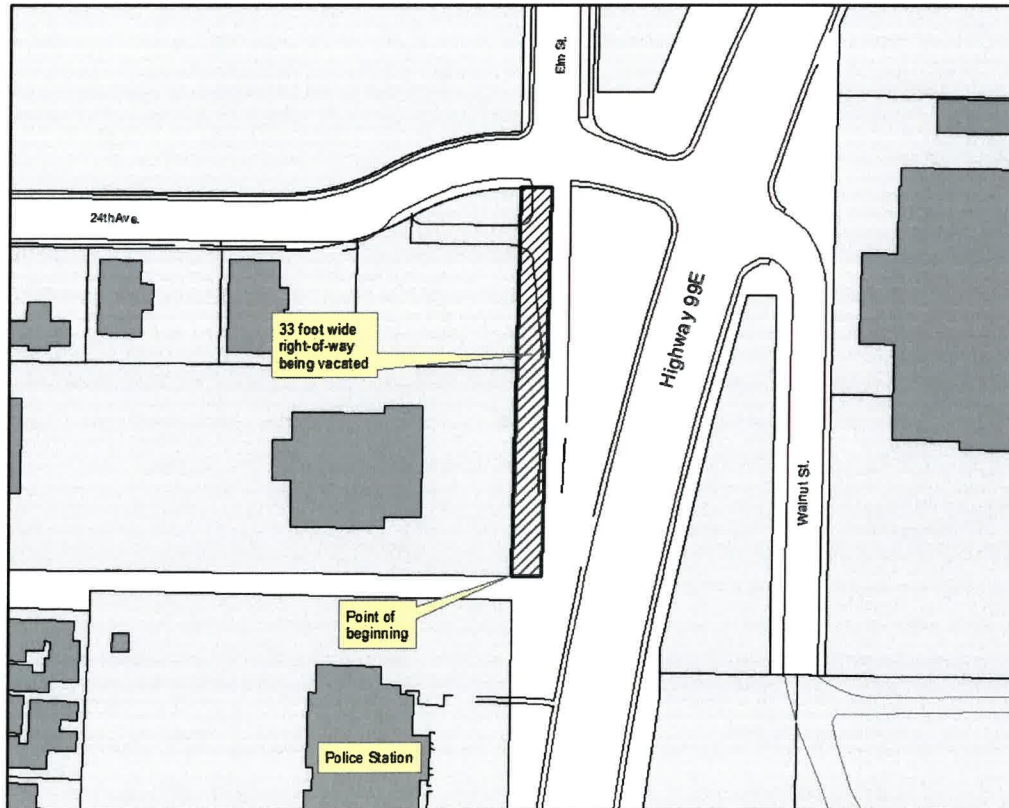
Beginning at the southeast corner of Lot 20, Block 1, of "Houck's Addition to the City of Albany", a subdivision of record in Linn County, Oregon, said point being on the west right-of-way line of Elm Street;

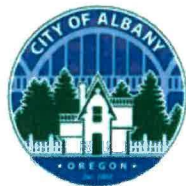
thence north 415.28 feet along the west right-of-way line of Elm Street to the northeast corner of that property vacated by City of Albany, Oregon, Ordinance 5679, recorded in Linn County, Oregon deed records DN2007-21798, said point lying on the south right-of-way line of 24<sup>th</sup> Avenue and the west right-of-way line of Elm Street;

thence east 33.0 feet perpendicular to the west right-of-way line of Elm Street to a point;

thence south 415.28 feet parallel to, and 33.0 feet east of, the west right-of-way line of Elm Street;

thence west 33.0 feet to the point of beginning. As shown on the map below.





## COMMUNITY DEVELOPMENT

333 Broadalbin Street SW, PO Box 490, Albany, Oregon 97321-0144 | BUILDING 541-917-7553 | PLANNING 541-917-7550

# Staff Report

## Vacation of Street

VC-02-22

October 10, 2022

HEARING BODIES:	Planning Commission	City Council
HEARING DATES:	Monday, October 17, 2022	Wednesday, November 9, 2022
HEARING TIMES:	5:15 p.m.	6:00 p.m.
HEARING LOCATION:	<b>Planning Commission, Monday, October 17, 2022</b> Council Chambers, Albany City Hall, 333 Broadalbin Street SW <u>Virtual Option:</u> At 5:15 p.m., join the meeting using the link below: <a href="https://council.cityofalbany.net/groups/plc/zoom">https://council.cityofalbany.net/groups/plc/zoom</a> <u>Phone:</u> 1-253-215-8782; meeting id: 837-8633-4863; passcode: 464432 <u>In-person:</u> Appear in person at the meeting and register to speak using the sign-up sheet.	

### City Council, Wednesday, November 9, 2022

Council Chambers, Albany City Hall, 333 Broadalbin Street SW

Virtual Option:

To testify, please email [cdaa@cityofalbany.net](mailto:cdaa@cityofalbany.net) by **noon the day of the meeting** with your name, address, phone number, and if you are speaking for, against, or neutral on the topic.

In-person: Appear in person at the meeting and register to speak using the sign-up sheet.

Watch Livestream at 6:00 p.m.: <http://www.cityofalbany.net/livestream>

## Summary

On July 25, 2022, the Albany City Council initiated the vacation of Elm Street SW, south of 24<sup>th</sup> Avenue and north of Cathey Ditch.

The planning commission's recommendation on the proposal will be presented to the city council, who is the final decision-maker on this request.

Staff recommends the planning commission make a recommendation to the city council to approve the vacation of the right-of-way.

## Application Information

Proposal:	Right-of-way vacation of the western 33 feet of Elm Street between 24 <sup>th</sup> Avenue and Cathey Ditch.
Review Body:	Planning Commission and City Council (Type IV-Q, Quasi-Judicial Decision)
Report Prepared By:	Matthew Ruettgers, Community Development Director
Property Owner:	City of Albany, 333 Broadalbin Street SE, Albany, OR 97321





Applicant:	Gordon Steffensmeier, Civil Engineer III, on behalf of the City of Albany 333 Broadalbin Street SE, Albany, OR 97321
Address/Location:	Unaddressed and 2400 Pacific Boulevard SW.
Map/Tax Lot:	Linn County Assessor's Map No. 11S-04W-13AB; Tax Lots 1100 and 1200.
Zoning:	OP (Office Professional)
Comprehensive Plan Map:	Commercial Light
Acres:	N/A
Existing Land Use:	Vacant, Electric power equipment sales and manufacturing
Neighborhood:	West Albany
Surrounding Uses:	North: High School South: Police Station East: State highway West: Vacant and Electrical power equipment sales
Prior History:	No prior land use cases.

## Review Process and Appeals

The proposed vacation is processed through a Type IV quasi-judicial land use review process. The planning commission will hold a public hearing to consider the proposed vacation and will make a recommendation to the city council. The city council will hold a subsequent public hearing to consider the proposed vacation. After closing the public hearing, the city council will deliberate and make a final decision.

Within five days of the city council's final decision on this application, the community development director will provide written notice of decision to the applicant and any other parties entitled to notice. The city council's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA) if a person with standing files a notice of intent to appeal not later than 21 days after the notice of decision is mailed (Albany Development Code (ADC) 1.250).

## Public Notice

A public notice was mailed to surrounding property owners within 200 or 400 feet of the subject portion of right-of-way on September 21, 2022, in accordance with Oregon Revised Statutes (ORS) 271 and ADC 1.250. A public notice was posted on the portion of right-of-way to be vacated on October 10, 2022, in accordance with ADC 1.250(4). Notice of the public hearing was published in the *Albany Democrat-Herald* on October 3, 2022, and October 10, 2022, in accordance with ADC 1.250(4).

The staff report for the proposed vacation was posted on the City's website on October 10, 2022, at least seven days before the first evidentiary public hearing. At the time this report was published, the Albany Planning Division had received written comments from several utility companies who requested that an easement be retained over the proposed vacated area.

## Analysis of Development Code Criteria

The Albany Development Code (ADC or Code) includes the following review criteria, which must be met for this application to be approved. Code criteria are written in **bold** followed by findings, conclusions, and conditions of approval where conditions are necessary to meet the review criteria.

### Vacations Review Criteria (ADC 2.630)

#### Criteria 1

***The requested vacation is consistent with relevant Comprehensive Plan policies and with any street plan, city transportation or public facility plan.***

#### Findings of Fact

1.1 The street to be vacated does not appear on any street plan or City facility plan.

- 1.2 The properties that the vacated area will revert to are the properties immediately west of the right-of-way.
- 1.3 The following Comprehensive Plan policies have been identified as relevant to this review criterion:  
**GOAL 11: Public Facilities and Services**
  - a. Prohibit the construction of structures over public water lines and easements.
  - b. Prohibit the construction of structures over drainage improvements and easements.
  - c. Prohibit the construction of structures over public wastewater lines and easements.
- 1.4 Sanitary Sewer. Sanitary sewer utility maps indicate that there is no sewer line within the proposed vacated right-of-way.
- 1.5 Water. There are water service lines and fire hydrants within the right-of-way proposed for vacation.
- 1.6 Storm Drainage. There are no storm drainage lines within the right-of-way proposed for vacation.
- 1.7 Franchised Utilities. There are franchised utilities in the right-of-way proposed for vacation.

### Conclusions

- 1.1 Waterlines and franchised utilities exist within the right-of-way proposed for vacation.
- 1.2 The proposed vacation does not conflict with Albany's Transportation System Plan (TSP).
- 1.3 This criterion is met with the following condition.

### Condition

**Condition 1** A 33-foot public and franchise utility easement over the vacated right-of-way shall be retained.

### Criteria 2

***The requested vacation will not have a negative effect on access between public rights-of-way or to existing properties, potential lots, public facilities or utilities.***

### Findings of Fact

- 2.1 Two lots have frontage on the proposed vacation.
- 2.2 A public access easement will be retained over the full width of the vacated right of way. Both adjoining parcels will continue to have the ability to use the vacated right of way for access.
- 2.3 Vacating the right-of-way will not have a negative effect on any properties.

### Conclusions

- 2.1 The proposed street vacation will not negatively impact access between public right-of-way and will not eliminate street access to any parcels.
- 2.2 This criterion is met with the following condition.

### Condition

**Condition 2** A 33-foot public access easement over the vacated right of way shall be retained.

### Criteria 3

***The requested vacation will not have a negative effect on traffic circulation or emergency service protection.***

### Findings of Fact

- 3.1 As discussed above, the vacation will not have a negative impact on access between rights-of-way or remove access to any existing parcels.

### Conclusions

- 3.1 The requested vacation will not have a negative effect on traffic circulation or emergency vehicle service protection.

3.2 This criterion is met without conditions.

#### Criteria 4

***The portion of the right-of-way that is to be vacated will be brought into compliance with Code requirements, such as landscaping, driveway access, and reconstruction of access for fire safety.***

#### Findings of Fact

4.1 The vacated right-of-way will be added to the adjacent lots. No changes are needed to bring the vacated area into compliance.

#### Conclusions

4.1 The vacated right-of-way will be in development code compliance without changes.

4.2 This criterion is met without conditions.

#### Criteria 5

***The public interest, present and future, will be best served by approval of the proposed vacation.***

#### Findings of Fact

5.1 The vacated right-of-way will become part of adjacent lots, rather than being a public right-of-way.

5.2 It is in the public interest to have the unused right-of-way incorporated into the adjacent lots.

#### Conclusion

5.1 Approving the right-of-way vacation will allow the right-of-way to become private property.

## Overall Conclusion

As proposed, the application for a street vacation satisfies all of the applicable review criteria as outlined in this report.

## Conditions of Approval

**Condition 1** A 33-foot public utility and franchise easement over the vacated right-of-way shall be retained.

**Condition 2** A 33-foot public access easement over the vacated right-of-way shall be retained.

## Options for the Planning Commission

The planning commission has three options with respect to the proposed right-of-way vacation:

Option 1: Recommend that the city council approve request as proposed;

Option 2: Recommend that the city council approve the request with the condition of approval; or

Option 3: Recommend that the city council deny the request.

## Motion

Based on the analysis in this report, staff suggests that the planning commission recommend that the city council approve the requested right-of-way vacation as described in this staff report, with one condition specific to the need for retaining a public utility easement over the entire right-of-way. Below is a recommended motion to this effect:

*I move that the planning commission recommend that the city council approve with conditions, the land use application for right-of-way vacation of a 33-foot-wide street under planning file VC-02-22, as described in the October 10, 2022, staff report. This motion is based on the findings and conclusions in the staff report, and the findings in support of the application made by the planning commission during deliberations on this matter.*

## Attachments

Legal description of proposed right-of-way vacation, including location map.



# Exhibit A

(Legal Description of Area to be vacated)

Beginning at the southeast corner of Lot 20, Block 1, of “Houck’s Addition to the City of Albany”, a subdivision of record in Linn County, Oregon, said point being on the west right-of-way line of Elm Street;

thence north 415.28 feet along the west right-of-way line of Elm Street to the northeast corner of that property vacated by City of Albany, Oregon, Ordinance 5679, recorded in Linn County, Oregon deed records DN2007-21798, said point lying on the south right-of-way line of 24<sup>th</sup> Avenue and the west right-of-way line of Elm Street;

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