

AN ORDINANCE VACATING A PORTION OF PUBLIC ALLEY RIGHT-OF-WAY EAST OF BAKER STREET, BETWEEN FOURTH AND FIFTH AVENUES, IN ALBANY, OREGON; ADOPTING FINDINGS; AND DECLARING AN EMERGENCY.

WHEREAS, notices of public hearing were mailed, posted, and published as required by state and local law; and

WHEREAS, the Albany Hearings Board held a public hearing on July 28, 2011; and

WHEREAS, the Albany Hearings Board recommended that the City Council approve the proposed vacation; and

WHEREAS, the Albany City Council held a public hearing on September 14, 2011.

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

Section 1: Subject Property. A portion of the public alley right-of-way east of Baker Street, between 4th and 5th Avenues (File VC-01-11) (see legal descriptions on attached Exhibit A and map labeled Exhibit B) is hereby vacated.

Section 2: Findings. The Findings and Conclusions in the Staff Report attached as Exhibit C are hereby adopted in support of this decision.

Section 3: Easement Retained. The City retains a public utility easement over the area being vacated. The easement will benefit the City, as well as franchise utilities, their successors, assigns, authorized agents, and/or contractors.

Section 4: Emergency Clause. Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of the city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Section 5: The City Recorder shall, within 10 days of the effective date of this ordinance, file a certified copy of the ordinance with the Linn County Clerk, Linn County Assessor, and Linn County Surveyor (ORS 271.150). The petitioner for the vacation shall bear the recording costs.

Passed by the Council: September 14, 2011

Approved by the Mayor: September 14, 2011

Effective Date: September 14, 2011

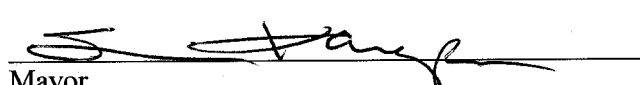
ATTEST

City Clerk



*Betty Laquell*

Mayor



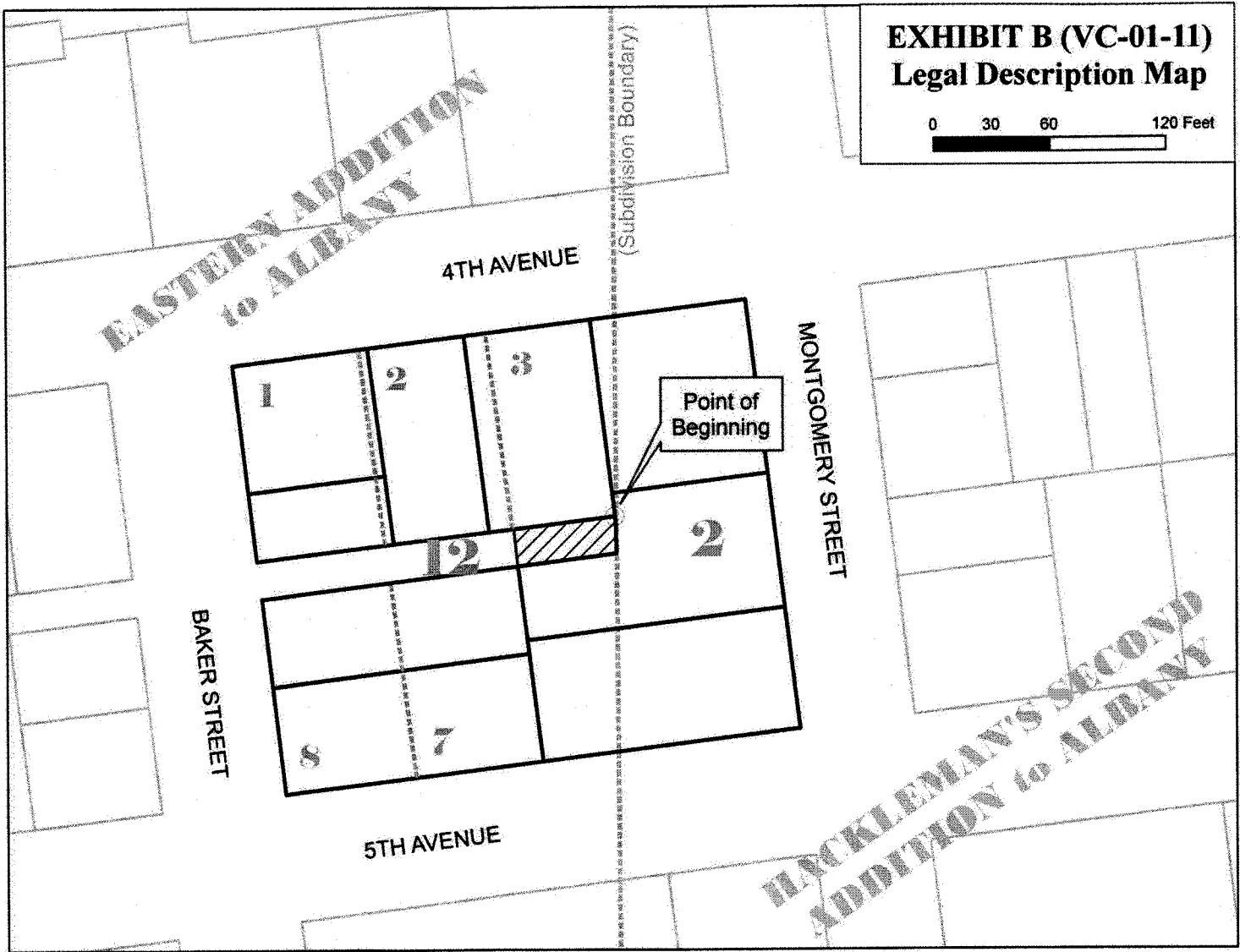
## **ORDINANCE EXHIBIT A**

### **Right-of-Way Vacation VC-01-11**

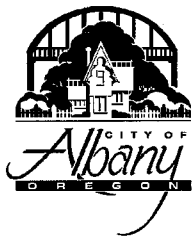
A tract of land located in the northeast one-quarter of the northwest one-quarter of Section 7, Township 11 South, Range 3 West, Willamette Meridian, City of Albany, Linn County, Oregon, as shown on the attached map and more particularly described as:

Beginning at the southeast corner of Lot 3, Block 12 of the Eastern Addition to the City of Albany, said point also being the intersection of said Block 12 and the north boundary of the alley right-of-way; thence southerly along the east boundary of said Block 12 to the point of intersection of said Block 12 and the south boundary of the alley right-of-way; thence west along the south boundary of said alley right-of-way to the northeast corner of Lot 7, Block 12 of said Eastern Addition; thence north 20.0 feet to the north boundary of said alley right-of-way, said point also being the southwest corner of Lot 3, Block 12 of said Eastern Addition; thence east along the north boundary of said alley right-of-way to the Point of Beginning.

This area being vacated contains 1,040 square feet, more or less.



ORDINANCE EXHIBIT B



# Community Development Department

333 Broadalbin Street SW, P.O. Box 490, Albany, OR 97321

Phone: (541) 917-7550 Facsimile: (541) 917-7598

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## STAFF REPORT

### Vacation (Public Street/Alley Right-of-Way) VC-01-11

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<b><u>HEARING BODIES</u></b>	CITY COUNCIL
<b><u>HEARING DATES</u></b>	Wednesday, September 14, 2011
<b><u>HEARING TIMES</u></b>	7:15 p.m.
<b><u>HEARING LOCATION</u></b>	Council Chambers  Albany City Hall, 333 Broadalbin Street SW

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#### **EXECUTIVE SUMMARY**

The applicants propose a Vacation application to vacate a portion of a public alley right-of-way east of Baker Street, between 4th Avenue and 5th Avenue. The alley does not extend through to Montgomery Street and the adjacent property owners wish to have the easternmost 52 feet of the alley vacated so they can incorporate the area into their parcels for their personal use. Access will not be restricted for any of the lots along the alley. A public storm drainage main runs through the alley right-of-way. The five (5) Vacation review criteria are addressed in detail in the staff report below.

#### **HEARINGS BOARD RECOMMENDATION**

The Hearings Board held a public hearing on July 28, 2011 and recommended that the City Council to approve this vacation application with one condition.

- 1.1 A public utility easement will be retained over the entire area to be vacated. This will allow access to public utilities within the vacated area.

#### **GENERAL INFORMATION**

DATE OF REPORT:	September 7, 2011
FILE:	VC-01-11
TYPE OF APPLICATION:	Vacation of a portion of the public alley right-of-way between 4th Avenue and 5th Avenue and between Montgomery Street and Baker Street.
REVIEW BODIES:	Hearings Board and City Council
APPLICANT:	Rich Catlin, 424 Montgomery Street SE; and Ken Armstrong, 222 4th Avenue SE
ADDRESS/LOCATION:	Public alley right-of-way between 4th Avenue and 5th Avenue and between Montgomery Street and Baker Street. (Attachment A)

MAPS/TAX LOT: Public alley right-of-way and adjacent properties are shown on Linn County Assessor's Map Nos. 11S-03W-07BA

TOTAL LAND AREA: Approximately 1,040 square feet

PURPOSE OF REQUEST: Vacation of public alley right-of-way to allow for personal use of the area.

EXISTING LAND USE: Unimproved public right-of-way

SURROUNDING ZONING: HM (Hackleman Monteith) (Attachment B)

SURROUNDING USES: Single-Family homes

STAFF REPORT BY: Mike Leopard, Infrastructure Analyst

### **NOTICE INFORMATION**

A notice of public hearing was mailed to surrounding property owners on July 15, 2011. The site was posted on July 12, 2011, in accordance with Section 1.410 of the Albany Development Code. Two legal notices were published in the *Albany Democrat-Herald* on July 11 and 18, 2011, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was prepared (September 7, 2011), the Albany Planning Department had received no written comments.

### **STAFF ANALYSIS OF THE APPLICATION**

#### **OVERVIEW**

The area in question is a 52-foot-long section of alley right-of-way between 4th Avenue and 5th Avenue and between Baker Street and Montgomery Street. This portion of the alley right-of-way has historically been used for access to the lots adjoining the alley. The alley right-of-way was dedicated in its current configuration with the Eastern Addition to Albany subdivision plat in 1882.

Because the alley does not extend through the block the only lots that use this section of the alley for access are the applicants' lots.

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

***Criterion (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 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.

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  - c. Prohibit the construction of structures over public wastewater lines and easements.
- 1.2 Sanitary Sewer. Sanitary sewer utility maps indicate that no public sanitary sewer facilities exist in the area proposed for vacation.
  - 1.3 Water. Water utility maps indicate that no public water facilities exist in the area proposed for vacation.
  - 1.4 Storm Drainage. Storm drainage utility maps indicate that a 10-inch public storm drainage main lies within the area proposed for vacation (Attachment C).
  - 1.5 Storm Drainage. ADC 12.370 requires the dedication of public utility easements of *at least 15 feet in width*, centered over the main, for all public storm drain lines and appurtenances. Permanent structures are not allowed to encroach on a public utility easement, or be placed over a public storm drain line.
  - 1.6 Other Utilities. City staff has contacted the various franchise utility providers about the proposed right-of-way vacation. We received no response to our request for information from any franchise utility. Based on the lack of response from other franchise utilities, it is assumed that no private franchise utilities exist within the area to be vacated. A public utility easement will be retained over the entire area to be vacated.
  - 1.7 Transportation. The right-of-way proposed for vacation is a dead-end section of public alley located east of Baker Street between 4th and 5th Avenues. The existing public alley right-of-way is 20 feet wide, begins at Baker Street, and extends approximately 185 feet to the east. The right-of-way does not extend all the way through the block and stops about 80 feet west of Montgomery Street. The placement of the home at 424 Montgomery Street precludes the possibility of ever extending the alley through the block.
  - 1.8 Transportation. The City's Transportation System Plan (TSP) does not identify the alley as a necessary transportation facility.

## CONCLUSIONS

- 1.1 The only public utility that lies within the area to be vacated is a 10-inch diameter storm drainage main that runs along the center of the alley.
- 1.2 The proposed vacation does not conflict with Albany's TSP.
- 1.3 There are no plans for improving or extending this alley, or to connect it with any other public street.
- 1.4 A public utility easement is needed to provide access rights to the existing public storm drainage main that lies within the area to be vacated.

## CONDITION

- 1.1 A public utility easement will be retained over the entire area to be vacated (See Attachment C). This will allow access to public utilities within the vacated area.

***Criterion (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 The area proposed for vacation is a 52-foot long section at the end of the public alley right-of-way between 4th Avenue and 5th Avenue and between Baker Street and Montgomery Street. Five (5) parcels, including the two (2) parcels that have requested the vacation, take access from the alley. All five (5) parcels would retain the ability to use the remaining portion of the alley to access Baker Street in the event that the vacation is approved. This right-of-way is not improved to City standards, and basically serves as a driveway into the back of the adjacent lots.
- 2.2 There is a public storm drainage main that exists within this right-of-way, but the City will retain public utility easement over the area to be vacated to protect access rights to the main.

**CONCLUSIONS**

- 2.1 The area proposed for vacation is not needed for connectivity for vehicular traffic between public rights-of-way. The alley is a dead end that terminates at the applicants' lots. The proposed vacation would not prevent any of the parcels that currently use the alley for access from continuing to do so.
- 2.2 A public utility easement will be necessary over the vacated area to assure that the City has access to the public storm drainage main that lies within the area to be vacated.

***Criterion (3) The requested vacation will not have a negative effect on traffic circulation or emergency service protection.***

**FINDINGS OF FACT**

- 3.1 The area proposed for vacation is an unimproved alley terminating in a dead end at the applicants' lots. This alley only serves as a driveway to the adjacent lots and can only be accessed from Baker Street to the west. All parcels that adjoin the alley would continue to have the ability to use the alley to access their parcels if the vacation is approved.
- 3.2 The portion of the alley proposed for vacation (the eastern 52 feet, approximately) is at the end of the existing right-of-way. The south half of the area is not currently open to traffic. A portion of the north half of the area is incorporated into driveway access to the rear of 224 4th Avenue.
- 3.3 The narrow right-of-way and travel aisle width of the existing alley severely limit its ability to accommodate emergency vehicles such as fire trucks. That condition would remain unchanged should the vacation be approved.

**CONCLUSIONS**

- 3.1 The requested vacation will not have a negative effect on traffic circulation as the alley in question only provides access to the adjacent lots and is a dead end. The area to be vacated is only used by the applicants.
- 3.2 Emergency vehicle access remains unchanged by the proposed vacation.

***Criterion (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 right-of-way to be vacated will be incorporated into the applicants' adjacent lots. The area to be vacated was initially dedicated as public right-of-way with the Eastern Addition to Albany subdivision plat.
- 4.2 The area to be vacated is currently being used only as access to the applicants' lots. The vacated area will continue to be available for use by the applicants. No change in access for emergency vehicles will result from the proposed vacation.
- 4.3 The areas proposed for vacation would not become part of the "front yard" setback, and therefore will not require additional landscaping, etc.

**CONCLUSION**

- 4.1 No additional landscaping will be necessary if the area is vacated because the property adjacent to the vacated area is not considered "front yard" for the adjacent properties.

***Criterion (5) The public interest, present and future, will be best served by approval of the proposed vacation.***

**FINDINGS OF FACT**

- 5.1 The area proposed for vacation is an unimproved alley right-of-way. The area to be vacated is currently being used only as an access to the applicants' lots.
- 5.2 It will be necessary to maintain a public utility easement over the vacated area because it includes a public storm drainage main.
- 5.3 Vacation of the right-of-way will not impact other properties adjacent to the alley because they only can access the alley from Baker Street to the west.

**CONCLUSION**

- 5.1 Vacating this portion of the right-of-way will not adversely impact the public interest.

Attachments: A - Location Map; B - Zoning Map; C - Utility Map



**Proposed Alley  
Right-of-Way Vacation  
VC-01-11**



0 60 120 Feet



Attachment A - Location Map



Attachment B – Zoning Map

Attachment C – Utility Map

