

AN ORDINANCE VACATING A PORTION OF THE 32ND AVENUE RIGHT-OF-WAY EAST OF PACIFIC BOULEVARD, 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 Planning Commission held a public hearing on May 21, 2012; and

WHEREAS, the Albany Planning Commission recommended that the City Council approve the proposed vacation; and

WHEREAS, the Albany City Council held a public hearing on June 6, 2012.

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

Section 1: Subject Property. A portion of the 32nd Avenue right-of-way east of Pacific Boulevard (File VC-01-12) (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: Easements Retained. The City retains a public utility easement and a public access easement over the area being vacated.

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.

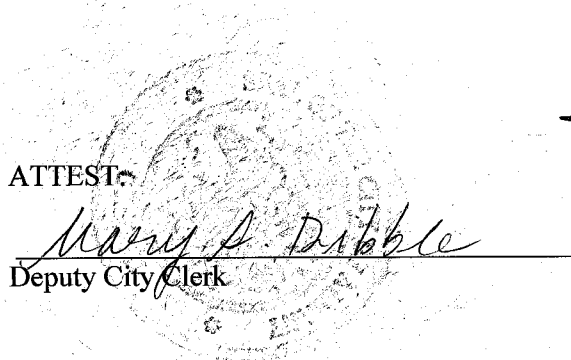
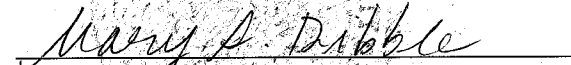
Passed by the Council: June 6, 2012

Approved by the Mayor: June 6, 2012

Effective Date: June 6, 2012

  
Mayor

ATTEST:

  
  
Deputy City Clerk

**LINN COUNTY**  
Recording Cover Sheet  
All Transactions, ORS: 205.234

LINN COUNTY, OREGON      **2012-08758**  
ORD-VAC  
Cnt=1 Str=1 S. WILSON      **06/15/2012 03:26:20 PM**  
\$60.00 \$11.00 \$15.00 \$9.00 \$10.00      **\$105.00**

After Recording Return To:

City of Albany City Clerk

PO Box 490

Albany, OR 97321



I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk



All Tax Statements Should Be Sent To:

City of Albany - Exempt

1. Name/Title of Transaction - by ORS 205.234 (a)

ORD #5781 – vacating a portion of the 32<sup>nd</sup> Avenue right-of-way east of Pacific Boulevard, in Albany.

2. Grantor/Direct Party - required by ORS 205.125(1)(b) and ORS 205.160

City of Albany

3. Grantee/Indirect Party - required by ORS 205.125(1)(a) and ORS 205.160

YMCA and Orberto Sausage Company

4. True and Actual Consideration (if there is one), ORS 93.030

\$0

ORD 5781

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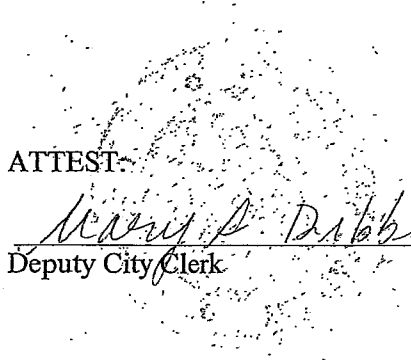
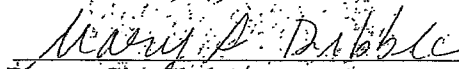
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Mayor

ATTEST:

  
  
Deputy City Clerk

## ORDINANCE EXHIBIT A

### Right-of-Way Vacation VC-01-12

A portion of that certain tract conveyed to the City of Albany for street purposes per Book 294, Page 438, Linn County Record of Deeds, lying in the Southeast 1/4 of Section 13, Township 11 South, Range 4 West, Willamette Meridian, City of Albany, Linn County, Oregon, more particularly described as follows:

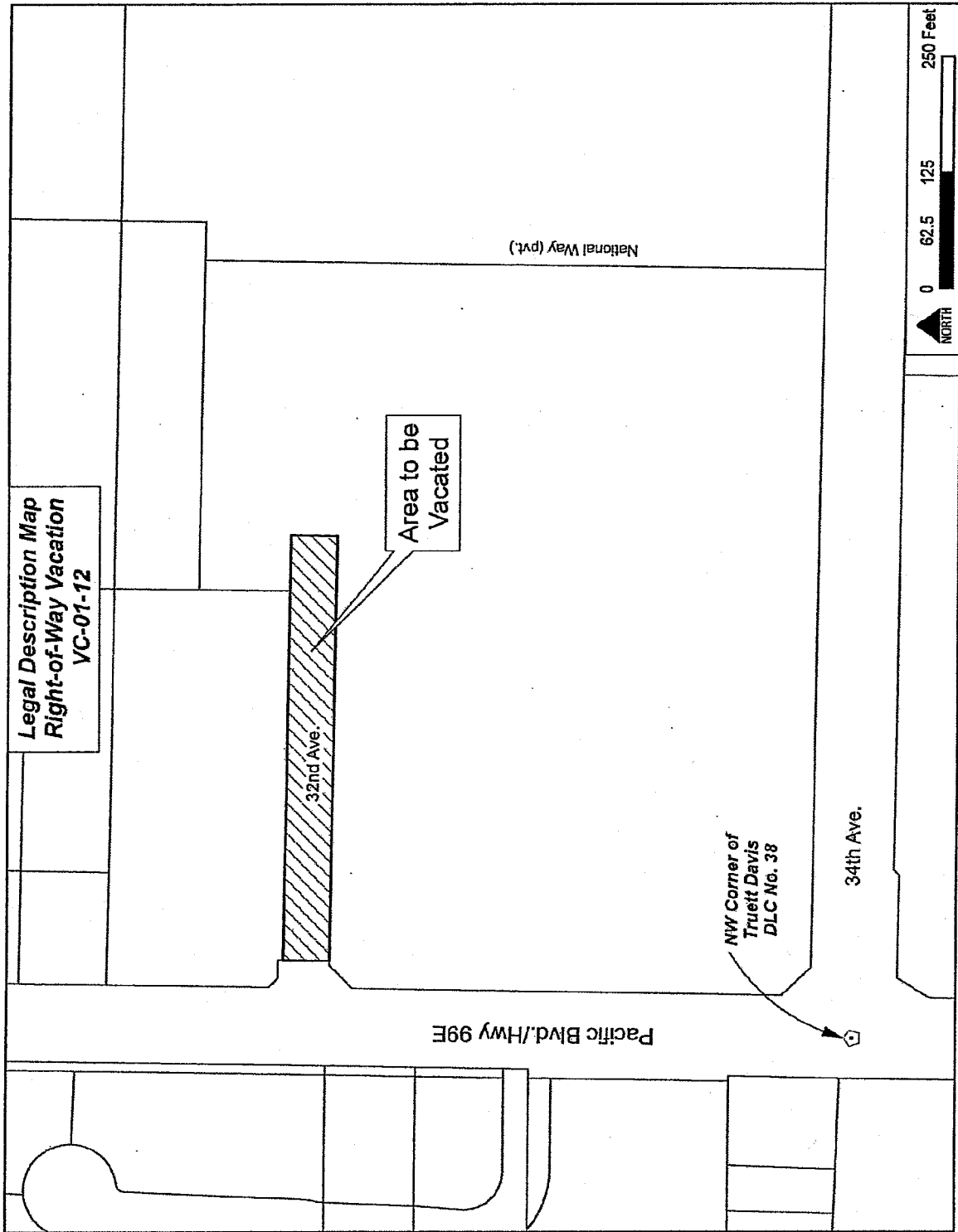
Beginning at a 1/2" iron rod on the east right-of-way line of the Pacific Highway (U.S. 99E) as it is depicted on Linn County Survey No. 7373, said rod being  $N00^{\circ}46'W$  558.50 feet from a point on the north line of, and  $N89^{\circ}06'E$  40.30 feet from the northwest corner of the Truett Davis DLC No. 38, said Township and Range; thence leaving said east right-of-way line  $N89^{\circ}06'E$  488.64 feet to a 1/2" iron rod; thence  $N00^{\circ}46'W$  50.00 feet; thence  $S89^{\circ}06'W$  488.64 feet to said east right-of-way line of the Pacific Highway (U.S. 99E); thence along said right-of-way line  $S00^{\circ}46'E$  50.00 feet to the point of beginning.

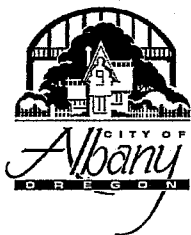
Save and except the westernmost 30.00 feet of even width.

The basis for this description is said Linn County Survey No. 7373.

The area being vacated contains 22,932 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-01-12

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<b><u>HEARING BODY</u></b>	CITY COUNCIL
<b><u>HEARING DATE</u></b>	Wednesday, June 6, 2012
<b><u>HEARING TIME</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 vacation application proposes to vacate a portion of the 32nd Avenue right-of-way east of Pacific Boulevard, north of the YMCA property at 3311 Pacific Boulevard SW. The street is a dead end with no outlet to the east. The street currently serves only two properties: the YMCA property to the south; and the Oberto Sausage Company property to the north. If vacated, access will not be restricted for either of the lots along the existing street. Public utility and access easements will be retained over the area to be vacated. The applicant is the City of Albany.

The five (5) Vacation review criteria are addressed in detail in the staff report below.

#### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission held a public hearing on May 21, 2012 and recommended that the City Council to approve this vacation application with the following condition.

- 1.1 A public utility and access easement will be retained over the entire area to be vacated.

#### **GENERAL INFORMATION**

DATE OF REPORT:	May 30, 2012
FILE:	VC-01-12
TYPE OF APPLICATION:	Vacation of a portion of the 32nd Avenue right-of-way east of Pacific Boulevard.
REVIEW BODIES:	Planning Commission and City Council
APPLICANT:	City of Albany

ADDRESS/LOCATION: 32nd Avenue right-of-way east of Pacific Boulevard, north of YMCA property at 3311 Pacific Boulevard. (Attachment A)

MAPS/TAX LOT: Public right-of-way and adjacent properties are shown on Linn County Assessor's Map Nos. 11S-04W-13DA

TOTAL LAND AREA: Approximately 22,932 square feet

EXISTING LAND USE: Public street right-of-way

SURROUNDING ZONING: CC (Community Commercial) and LI (Light Industrial) (Attachment B)

SURROUNDING USES: YMCA, various industrial developments

STAFF REPORT BY: Mike Leopard, Infrastructure Analyst

### NOTICE INFORMATION

The site was posted on May 7, 2012, in accordance with Section 1.410 of the Albany Development Code. Two legal notices were published in the *Albany Democrat-Herald* on May 9, 2012, and May 16, 2012, in accordance with Oregon Revised Statute (ORS) 271.110. At the time this staff report was prepared (May 30, 2012), the Albany Planning Division had received no comments.

### STAFF ANALYSIS OF THE APPLICATION

#### OVERVIEW

The area in question is a portion of the 32nd Avenue right-of-way that lies east of Pacific Boulevard. This right-of-way is approximately 450 feet long. The property was sold to the City of Albany by warranty deed in 1963. The City Council accepted the property as right-of-way by Resolution No. 739. The proposal is to vacate the entire right-of-way except for the westernmost 30 feet that is adjacent to Pacific Boulevard.

The street is a dead end and the only parcels that use this right-of-way for access are those two owned by the YMCA (south) and Oberto Sausage Company (north). The nearest street to the east of this right-of-way is a private street (National Way). If vacated, the street will remain as a shared access to the same two parcels. A public utility and access easement will be retained over the entire area to be vacated.

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.
  - c. Prohibit the construction of structures over public wastewater lines and easements.
- 1.2 Sanitary Sewer. Sanitary sewer utility maps indicate that an 8-inch public sanitary sewer main exists in the area proposed for vacation (Attachment C).
  - 1.3 Water. Water utility maps indicate that an 8-inch public water main exists in a portion of the area proposed for vacation (Attachment C).
  - 1.4 Storm Drainage. Storm drainage utility maps indicate that no public storm drainage facilities lie within the area proposed for vacation.
  - 1.5 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. A public utility easement will be retained over the entire area to be vacated due to the existence of public sewer and water facilities; therefore, franchise utilities that may exist in this area will also retain access rights.
  - 1.6 Transportation. The right-of-way proposed for vacation is a dead-end section of 32nd Avenue located east of Pacific Boulevard. The existing public street right-of-way is 50 feet wide, begins at Pacific Boulevard, and extends approximately 450 feet to the east, where it terminates without a proper turn-around. The street is classified as a local street and is not improved to city standards. The street has roll curb and gutter, no sidewalks, and improvements end about 100 feet short of the end of the right-of-way. The nearest street to the east is National Way, which is a private street that runs in a north-south direction.
  - 1.7 Transportation. The City's Transportation System Plan (TSP) does not identify this right-of-way as being part of the city's arterial/collector street system, nor does it anticipate linking or connecting this portion of 32nd Avenue with another street.

## CONCLUSIONS

- 1.1 An 8-inch public sanitary sewer main and an 8-inch public water main lie within the portion of right-of-way proposed for vacation.
- 1.2 The proposed vacation does not conflict with Albany's TSP.
- 1.3 There are no plans for further improving or extending this street, 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 and franchise utilities that lie within the area to be vacated.

## CONDITION

- 1.1 A public utility easement will be retained over the entire area to be vacated. This will allow access to public and franchise 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 This section of 32nd Avenue provides access to two parcels; the parcel to the south owned by the YMCA, and a parcel to the north owned by Oberto Sausage Company of Oregon.
- 2.2 Vacation of 32nd Avenue would not land-lock or deny access to any existing parcels. An access easement would be retained so that the existing improvements on 32nd Avenue would continue to provide the public with access to the Oberto and YMCA sites. Both parcels also have additional access points to the public street system.
- 2.3 Once vacated, 32nd Avenue would function as a private driveway access to the two parcels that currently take access from the street.
- 2.4 If the vacation is not approved, the recent development approval for the YMCA site would need to be modified. The YMCA development approval was contingent on the vacation of 32nd Avenue. The YMCA site plan would need to be modified to include right-of-way setbacks, landscaping, and street improvements along 32nd Avenue.

## CONCLUSIONS

- 2.1 Once vacated, 32nd Avenue will serve as a private driveway and continue to provide the public with access to the Oberto and YMCA sites.
- 2.2 An access easement over the full width and length of the existing 32nd Avenue right-of-way will need to be provided in order to provide both adjoining parcels with access to Pacific Boulevard using the existing improvements.

## CONDITION

- 2.1 The City will retain a public utility and access easement over the full area of the 32nd Avenue right-of-way being vacated.

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

## FINDINGS OF FACT

- 3.1 This section of 32nd Avenue is a dead-end street providing access to two parcels.
- 3.2 When vacated, 32nd Avenue will continue to provide access to both adjoining parcels as a private driveway open to use for access by the public.
- 3.3 ODOT reviewed the vacation application and recommended that the City retain sufficient right-of-way so that channelization needs related to the use of the approach to Pacific Boulevard can be addressed in the future. The proposal to retain the westernmost 30 feet of right-of-way adjacent to Pacific Boulevard satisfies that need.
- 3.4 Because the existing street improvements on 32nd Avenue will remain in place and will continue to provide access to the adjoining parcels, no impacts on emergency services protection are anticipated.

## CONCLUSION

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

*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 adjacent lots to the north and south. The area to be vacated was initially dedicated as public right-of-way by Resolution No. 739 in 1963.
- 4.2 The area to be vacated is currently being used only as access to the two adjacent lots. The vacated area will continue to be used for access by these lots. 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 a "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 a dead-end public street right-of-way. The area to be vacated is currently being used only as an access to the two adjacent parcels to the north and south.
- 5.2 It will be necessary to maintain a public utility and access easement over the vacated area to allow for public access to the area.
- 5.3 Vacation of the right-of-way will not impact other properties, as only two parcels use the street for access.

## 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

# Attachment A – Location Map





# Attachment C – Utility Map

