



## Legislation Text

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**File #:** CPC V-22-00046, **Version:** 2

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Ordinance No. 22-91 vacating a portion of public right-of-way known as Chelton Road consisting of 6,904 square feet (.16 acres)

(Legislative)

**Presenter:**

William Gray, Senior Planner, Planning and Community Development Department  
Peter Wysocki, Planning Director, Planning and Community Development Department

**Summary:**

Applicant: Gwen Afton  
Representatives: Allesi and Associates, Inc., and Mountain Peaks Realty  
Location: Chelton Road east of 3231, 3233, and 3235 Austin Drive

The owner of Lot 28, Block 4, Highland Hills Subdivision No. 2 (aka 3233 Austin Drive), Gwen Afton, has requested the vacation of a portion of Chelton Road lying adjacent Lots 27, 28, and 29, Highland Hills Subdivision No. 2 to cure an encroachment of a wood fence that was constructed onto undeveloped Chelton Road right-of-way by the owner.

**Background:**

The Applicant has proposed the vacation of a portion of Chelton Road right-of-way to cure the encroachment of a wood fence that they constructed within the right-of-way adjacent to the east property line of Lot 28, Block 4, Highland Hills Subdivision (see "Project Statement" and "Vacation Plat" attachment).

In the Fall of 2019, the Applicant constructed a new fence beyond their property line and onto undeveloped Chelton Road right-of-way. They may have done this because they also maintained this area to some degree as the adjacent property owner. Chelton Road is a dedicated public right-of-way pursuant to the final plat of Highland Hills Subdivision Filing No. 2 (recorded at Reception No. 284229, Office of the El Paso County Clerk and Recorder, August 9, 1962). A complaint in the Summer of 2020 led to the identification of this encroachment and led to enforcement steps being taken by the city requiring them to correct the problem. Following notice of this violation, the Applicant was provided alternatives to correct the problem. The options included (1) remove the fence; (2) relocate fence to the east property line of Lot 28; (3) apply for a Surface Revocable Permit; or (4) vacate the right-of-way where the fence is located. These options were discussed in detail with the Applicant and city departments (e.g., Engineering, Stormwater (SWENT), Fire, Parks) and Colorado Springs Utilities prior to application submittal. The determined best course of action in this case was to pursue vacation of a portion of the right-of-way. In doing so city staff and Colorado Springs Utilities (CSU) made the following recommendations to the Applicant:

- 1) A minimum 60 feet of right-of-way is required to be maintained for Chelton Road.
- 2) Relocate the wood fence to the west.
- 3) Reservation of utility easement is required to be included in any vacation ordinance for public utilities.

The vacation of right-of-way is solely at the discretion of City Council and is required to meeting the following criteria:

- 1) The right of way is no longer needed for public transportation purposes;

The right of way is undeveloped in the proposed vacation area and hasn't been used for transportation purposes. With the acquisition of the McRoberts parcel by the Applicant as replacement right-of-way it keeps the right-of-way for Chelton Road intact and in alignment with the current road, and maintains its transportation purpose (i.e., street, sidewalks, bike lanes, utilities) now and in the future.

- 2) The vacation will not adversely impact use of the right of way for public utility and/or drainage purposes;

The vacation of the right-of-way does not adversely impact public utilities and/or drainage purposes. Both SWENT and CSU had no objection to the vacation application. CSU has requested a reservation of public easement for utilities, and this will be included in any proposed ordinance.

- 3) The vacation will not adversely impact the uniform width of the remaining portions of the public right of way along the block frontage for which vacation is sought;

The vacation does not impact the uniform width of the remaining portion of the public right-of-way. With the acquisition of the McRoberts parcel it allows the 60' right-of-way to be maintained and in the location of the sharp, almost 90-degree turn, the right-of-way is wider than 60 feet. An outcome identified with the vacation was to maintain a right-of-way with no less than 60 feet in width that match with the platted right-of-way and the current alignment of the street's driving surface.

- 4) Access to lots or properties surrounding the public right of way will not be adversely affected; and

Access to lots or surrounding properties are not adversely affected. In fact, it is unchanged.

- 5) The vacation is consistent with the purpose of this Subdivision Code. (Ord. 96-44; Ord. 01-42; Ord. 06-13; Ord. 09-80; Ord. 12-75)

The purpose of the subdivision regulations is generally to promote the health, safety, convenience, and general welfare of the city. More specifically, a specific purpose of the subdivision regulations that applies to this street vacation is..." Provide for streets of adequate capacity and with which appropriate improvements will handle anticipated traffic flow", provide for adequate utilities, and assure the provision of adequate and safe circulation. The result of this vacation provides for an adequately size and aligned right-of-way for current and future transportation improvements and needs, addresses the location of existing utilities with the reservation of public utility easements, and provides for and maintain safe circulation with the condition to relocate the fence. The proposed application is consistent with the purpose of the subdivision code (see "Before and After Illustration"

attachment).

**Previous Council Action:**

City Council previously acted upon this property in 1962 with the approval of the platting of Highland Hills Subdivision No. 2.

**Financial Implications:**

N/A

**City Council Appointed Board/Commission/Committee Recommendation:**

According to Section 7.7.402.B.2 of the City Code, if a proposed vacation plat contained dedicated public right-of-way it is placed onto a City Council agenda for action after review by the administration. No review by an appointed board or commission is required.

**Stakeholder Process:**

The public notification process consisted of providing notice to adjacent property owners within 1,000 feet of the site, which included the mailing of postcards to 112 property owners on two (2) occasions; during the internal review stage and prior to the City Council hearing. The site was also posted during the two occasions noted above. City Planning staff received 10 written comments for the project. All comments received were generally opposed to the project citing the taking of city right-of-way for their own private use without permission, the fence being an eyesore to a once open vegetated streetscape, a blockade to safely walk alongside the road, and a driving hazard because of reduced sight distance.

Staff input is outlined in the following sections of this report. Staff sent the variance application to the standard internal and external review agencies for comments. Commenting agencies included Colorado Springs Fire Department, City Engineering, Stormwater Enterprise, City Traffic Engineering, and Colorado Springs Utilities. City Planning staff notes that the following review agencies provided project specific comments:

- City Fire - The City's Fire Department (CSFD) had no issues with the vacation as requested.
- City Engineering - The City Engineering Development Review (EDR) had no objections to vacating the right-of-way. They did request confirmation that the parcel identification number 6333107002 is the area that needed to be acquired by the city with this application. The parcel was acquired by the city on March 17, 2022, from Brian M. McRoberts by General Warrant Deed recorded at reception number 222038169, Official Records of El Paso County (see "Warranty Deed" attachment).

In addition, they reviewed the line of sight along the portion of road where the fence is constructed. The path of a drivers' eyes is impacted by the fence. It has been recommended that the fence is relocated to west edge of the vacate right-of-way.

- City Traffic - The City's Traffic Engineering Division had no comments on this item. They also evaluated sight distance and agreed with City Engineering on the requirement to relocate the fence as a condition of vacation.

- SWENT -Stormwater Enterprise (SWENT) had no review comments for this project.
- CSU - Colorado Springs Utilities (CSU) in their review of the application required that in the section of the ordinance vacating the right of way (commonly within Section 1), the following statement be included:"... with the retention of a public utility easement subject to those terms and conditions as specified in the instrument recorded at Reception Number 212112548 of the records of El Paso County, Colorado, except Dual Easements as defined by City Code section 7.7.607."

**Alternatives:**

1. Approve the application; or
2. Approve the application with conditions; or
3. Deny the application.

**Proposed Motion:**

Adopt an ordinance vacating a portion of public right-of-way known as Chelton Road consisting of 6,904 square feet (.16 acres) located east and adjacent to Lots 27, 28, and 29, Highland Hills Subdivision No. 2, based upon the finding that the application complies with the review criteria in City Code Section 7.7.402.C, with the following condition:

1. The wood fence is relocated to the western edge of the new Chelton Road alignment within 60 -days of final adoption of the vacation ordinance.

An ordinance vacating a portion of public right-of-way known as Chelton Road consisting of 6,904 square feet (.16 acres).