

CITY OF PACIFIC, WASHINGTON
ORDINANCE NO. 2015-1907

AN ORDINANCE OF PACIFIC, WASHINGTON, RELATING TO VACATION OF STREETS, ALLEYS, PUBLIC PLACES OR PORTIONS THEREOF, DESCRIBING THE PROCESS FOR PETITIONING THE COUNCIL FOR A STREET VACATION, INCLUDING THE REQUIREMENT FOR AN APPRAISAL, NOTICE OF THE PUBLIC HEARING, THE LEGISLATIVE FACTORS INVOLVED IN THE DECISION TO VACATE, PROCEDURE FOR THE PUBLIC HEARING, DESCRIBING CONDITIONS THAT MAY BE PLACED ON A VACATION, DESCRIBING THE METHOD OF COMPENSATION FOR VACATIONS, LIMITING VACATIONS OF WATERFRONT STREETS, RECORDING OF THE VACATION ORDINANCE, AND REPEALING AND REENACTING CHAPTER 13.16 TO THE PACIFIC MUNICIPAL CODE.

WHEREAS, the effect of the dedication to the public of street in plats is to grant an easement for purposes of public travel (RCW 58.08.050, 58.08.015, *Burmeister v. Howard*, 1 Wash. Terr. 207 (1867)); and

WHEREAS, owners of an interest in real estate abutting a street or alley that has been dedicated in this manner may petition the City Council to vacate the easement for public travel (chapter 35.79 RCW); and

WHEREAS, the City existing street vacation procedure in chapter 13.16 is outdated and must be revised to conform to chapter 35.79 RCW; and

WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt under SEPA, WAC 197-11-800(19) as a program relating solely to governmental procedures and containing no substantive standards respecting use or modification of the environment; and

WHEREAS, the City Council considered this ordinance during its regular meeting of September 14, 2015; Now, Therefore,

IT IS HEREBY ORDAINED BY THE PACIFIC CITY COUNCIL AS FOLLOWS:

Section 1. Pacific Municipal Code 13.16, as currently enacted, is hereby repealed.

Section 2. A new chapter 13.16 is hereby added to the Pacific Municipal Code, which shall read as follows:

CHAPTER 13.16

STREET AND ALLEY VACATIONS.

Sections:

- 13.16.010** Petition for vacation.
- 13.16.020** Petition fees.
- 13.16.030** Appraisals.
- 13.16.040** Notice of hearing.
- 13.16.050** Hearing.
- 13.16.060** Compensation.
- 13.16.070** Vacation of waterfront streets.
- 13.16.080** Recording.

13.16.010 Petition for vacation.

A. Petitions. The owners of an interest in real estate abutting upon any street, alley, public place or portion thereof created by easement may petition the City Council for a vacation of such area. The petition shall include a description of the property to be vacated, as prepared by a licensed surveyor. In addition, the petitioners shall provide evidence that the public has an easement upon such street or alley (and that the property is not owned in fee by the City). The petition shall be filed with the City Clerk.

B. Council Resolution. The City Council may propose a vacation of a street, alley, public place or portion thereof, without requiring that the abutting property owners make payment to the City for such vacation, where:

1. The street, alley or public place was not acquired at public expense;
2. The City Council determines that the street, alley or public place is not needed for public travel now or in the foreseeable future; and
3. The City's maintenance or upkeep of the street, alley or public place is unrelated to any use of the street, alley, or public place for public travel.

C. Notice of Proposed Vacation. If the petition is signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, or after the City Council's own motion and Resolution for a vacation, the City Council shall adopt a Resolution fixing a time when the petition will be heard and determined. The time set for hearing shall not be more than 60 days nor less than 20 days after the date of the passage of the Resolution.

13.16.020 Petition fees.

A. Prehearing fee. Every petition for the vacation of any street, alley or public place, or any portion thereof, shall be accompanied by a nonrefundable fee, as established by the City Council in its fee resolution. This fee is for the purpose of defraying the administrative costs associated with the processing of the vacation petitions.

B. Appraisal fee. If the City Council passes a Resolution as described in Section 13.16.010(C) setting the date for a public hearing, the petitioner shall deposit sufficient funds to cover the City's estimated cost of a full appraisal of the subject street, alley, public place or portion thereof to be vacated. In the event that the appraisal cost is less than the amount deposited, the vacation compensation paid by the petitioner to the City shall be reduced by the difference between the deposit and the actual cost, or, in the alternative, such difference shall be refunded. In the event the actual cost of the appraisal is more than the amount deposited, the vacation compensation payable to the City by the petitioner shall be increased by the difference between the deposit and the actual appraisal cost.

13.16.030 Appraisals.

A. If the City Council passes the Resolution described in Section 13.16.010(C), the public works director is authorized to obtain appraisals from qualified, independent appraisers for the fair market value of such streets, alleys or public places. The director is also authorized to obtain appraisals from qualified, independent real estate appraisers for the fair market value of alternate right-of-way land proposed to be granted or dedicated to the City in lieu of a cash payment, as described in Section 13.16.060. For appraisals of alternate right-of-way land, an additional appraisal deposit fee shall be paid for the appraisal of such property.

B. After the appraisal has been performed, the public works director shall notify the petitioner of the amount of compensation required, based on the criteria in Section 13.16.060, deducting therefrom any remaining appraisal fee deposit. The payment shall be delivered by the property owner(s) to the Finance Director for deposit.

13.16.040 Notice of Hearing.

A. Notice to be Provided. Upon the passage of the Resolution described in Section 13.16.010, the City Clerk shall give 20 days' notice of the pendency of the petition by a written notice posted in three of the most public places in the City (Algona-Pacific Library, City Hall Notice Board and City website), and a like notice in a conspicuous place on the street, alley or public place sought to be vacated and City website.

B. Elements of Notice when Petition Initiated by Abutters. The notice shall contain a statement that a petition has been filed to vacate the street or alley described in the notice, together with a statement of the time and place fixed by the City Council for the hearing on the petition. The notice will state that the Council shall hold a public hearing on the proposed vacation in the manner required by this Chapter. In addition, the notice posted on the alley or street proposed to be vacated shall indicate that such area is public access, that it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or submit written testimony to the City Council indicating his or her objection prior to such hearing.

C. Elements of Notice when Petition initiated by City Council. When the proceeding is initiated by Resolution of the City Council without a petition having been signed by the abutting property owners of more than two-thirds of the abutting property owners, the City Clerk shall provide by mail, the notice described in Section 13.16.004(B) above, at least fifteen days before the date fixed for the hearing, to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street, alley or any part thereof sought to be vacated, as shown on the rolls of the county treasurer, directed to the address thereon shown.

13.16.050 Hearing.

A. Objections – Council Prohibited from Proceeding. If fifty (50) percent of the owners of property abutting the street, alley, public place or portion thereof subject to the vacation petition or Council Resolution for vacation file written objections to the proposed vacation with the City Clerk, prior to the time of the public hearing, the City shall be prohibited from proceeding with the vacation.

B. Staff Report. The staff shall prepare a report and recommendation on the proposed vacation, which shall include: (1) the history of private and public use of the area sought to be vacated, including the type of use (pedestrian, vehicular, etc.) and length of time such use has occurred; (2) a description of the manner in which the area sought to be vacated was acquired (whether by dedication, public expense, etc.); (3) a description of all utilities or other public services that currently utilize the area sought to be vacated, whether by easement or otherwise; (4) the staff's recommendation on the functionality of the area sought to be vacated for public purposes; (5) references to any planning document, such as the City's Comprehensive Plan, the Transportation Element of the Comprehensive plan, the 6-Year Road Plan or the Capital Facilities Element of the Comprehensive Plan that mention the area sought to be vacated for any purpose; (6) the staff's recommendation whether the area sought to be vacated will be needed in the future as part of the City's transportation system (pedestrian, bicycle or vehicular).

C. Hearing. The City Council shall hold a public hearing on the proposed vacation and consider the written recommendations of staff, abutters, the public and all testimony provided at the hearing. The City Council shall whether the public interest is served by such vacation and either grant the vacation or deny it. Written findings and conclusions shall be adopted by the Council to support its decision.

D. Ordinance. If the City Council decides to grant a vacation petition, the Ordinance granting such vacation may provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate the City for such vacation as provided in Section 13.16.060. The Ordinance may be conditioned on the retention of easements by the City or other public service/utility providers, as described in Section 13.16.060(E)

13.16.060 Compensation. Ordinances vacating any street, alley, public place or portion thereof shall not be adopted by the City Council until the owners of the property abutting such area shall compensate the City in the amount required by this Section.

A. If the street, alley, public place or portion thereof has **not** been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property to be vacated was **not** acquired at public expense, the owners of property abutting the street shall compensate the City in an amount that does not exceed one-half of the appraised value of the street.

B. If the street, alley, public place or portion thereof has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property to be vacated was acquired at public expense, the City may require the owners of the property abutting the street to compensate the City in an amount that does not exceed the full appraised value of the area vacated.

C. The full fair market value, as shown on the appraisal, shall be paid upon vacation of any streets, alleys or public places abutting upon bodies of water.

D. In-Lieu Transfers of Property. Conveyances of other property acceptable to the City may be made in lieu of the payment required by this Section, whether required to mitigate adverse impacts of the vacation or otherwise. When such a transfer is proposed for street purposes, the value of the property (as determined in subsections A, B or C above shall be credited to the required payment. When the value of the in-lieu parcel is less than the payment required by subsection A, B or C of this Section, the petitioner shall pay the difference to the City. When the value of the in-lieu parcel exceeds the payment required by subsections A, B or C of this Section, the City shall pay the difference to the petitioner. In addition, the petitioner shall be responsible for all costs associated with this transfer, in the same manner as a property purchase,

including but not limited to, title insurance, attorney review of the title, hazardous materials/waste testing, etc.

E. Vacations of Streets subject to 1889-90 Laws of Washington, Chapter 19, Section 32 (non-user statute). The City Council's adoption of a vacation ordinance for those streets and alleys subject to the 1889-1890 Laws of Washington, Chapter 19, Section 32 (non-user statute) shall not require compensation by the abutting owners. However, the property owners initiating such vacation shall pay the City's administrative fees relating to research and processing of the vacation request.

F. The ordinance may provide that the City shall retain an easement or the right to exercise and grant easements with respect to the vacated land for the construction, repair, and maintenance of public utilities and services.

G. Use of Proceeds. One-half of the revenue received by the City as compensation for the area vacated must be dedicated to the acquisition, improvement, development and related maintenance of public open space or transportation capital improvements in the City.

13.16.070 Vacation of waterfront streets.

A. The City shall not vacate any street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

1. The vacation is sought to enable the City to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

2. The City Council adopts a Resolution which declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation or education; or

3. The vacation is sought to enable the City to implement a plan, adopted by resolution or ordinance, that provides a comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

B. Before adopting a resolution vacating a street or alley under subsection (A)(2) of this Section, the City shall:

1. Compile an inventory of all rights-of-way within the City that abut the same body of water that is abutted by the street or alley sought to be vacated;

2. Conduct a study to determine if the street or alley to be vacated is suitable for use by the City for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation or education;

3. Hold a public hearing on the proposed vacation in the manner required by this Chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official prior to the hearing, indicating his or her objection; and

4. Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under B(2) of this subsection, and that the vacation is in the public interest.

C. No vacation shall be effective until the fair market value has been paid for the street or alley or portion thereof to be vacated. Monies received from the vacation may be used by the City only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

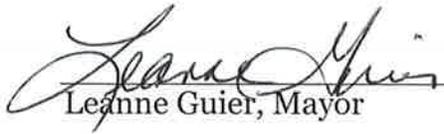
13.16.080 Recording. Posting and mailing of the notices described in this Chapter shall be the responsibility of the City Clerk. As required by RCW 35.79.030, a certified copy of the ordinance vacating the street, alley, public place or portion thereof shall be recorded by the City Clerk with the Office of the King County Records and Elections, after all fees and the value of the property, as determined in Section 13.16.060 have been paid to the City.

Section 2. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED by the City Council of the City of Pacific this 14th day of September, 2015.


Leanne Guier, Mayor

AUTHENTICATED:


Amy Stevenson-Ness, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney


Carol Morris, City Attorney