

Ordinance No. 00048

[Council Minutes 96/01/31](#)

ORDINANCE NO. 48

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AN ORDINANCE of the City Council of the City of Lakewood, Washington, establishing street and alley vacation procedures

WHEREAS, the Washington State Legislature directs code cities to follow established procedures for the vacation of streets, in accordance with RCW 35A.47.020 and Chapter 35.79 RCW; and,

WHEREAS, the City Council has determined that it is in the City's best interest to establish procedures for the vacation of public right-of-way.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1. Definitions.

A street or alley "vacation" means that the public is letting go of, or "vacating", the public interest in a property. After a street or an alley is vacated, the public no longer has a right to use the property for access.

Section 2. Statement of Purpose.

The purpose of this ordinance is to establish procedures, notice requirements and fees for the vacation of streets and alleys within the City. This ordinance is intended to implement the authority granted to the City by Chapter 35.79 RCW and RCW 35A.47.020 and to conform to their provisions. In case of conflict between this chapter and those statutes, the statutory provisions shall be controlling.

Section 3. Initiation of Vacation.

The owners of an interest in any real property abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the City Council. In the alternative, the City Council may itself initiate a vacation by Resolution. The petition or Resolution shall be filed with the City Clerk.

Section 4. Petition for Vacation.

The petition shall be in a form prescribed by the City Manager or designee and shall contain a name, address and telephone number of a representative for the petitioners. The petition shall also discuss the criteria set forth in Section 11. The sufficiency of the petition shall be governed by RCW 35A.01.040.

Section 5. Petition Fees.

Every petition for the vacation of any street or alley, or any part thereof, shall be accompanied by a fee in an amount established by resolution of the City to defray the administrative costs incurred in processing the petition and publishing, posting and mailing notices, plus any consulting costs incurred by the City during the review process. The fee shall not be refunded under any circumstances.

Section 6. Survey, vicinity map, plat map and legal description.

A. Every petition shall be accompanied by: (1) a survey, (2) a vicinity map showing the general area of the proposed vacation, (3) a plat map prepared and sealed by a professional land surveyor, registered in the State of Washington, indicating the specific parcels abutting the proposed street or alley to be vacated, and (4) an exact legal description of the portion of road to be vacated prepared and sealed by a professional land surveyor, registered in the State of Washington.

B. Flagging which indicates the boundaries of the street or alley shall be installed when the survey is conducted.

Section 7. Setting of hearing.

Upon receipt of the petition, the fee and all required documents, the City Clerk shall forward the petition and required documents, to the City Manager or designee who shall determine whether the petition has been signed by the owners of more than two-thirds of the property abutting the part of the street or alley to be vacated. If the petition has been signed by the required percentage of such owners, the City Manager or designee shall bring the petition before the City Council within 30 days of receipt of the petition, and the City Council shall, by Resolution, fix a time when the petition will be heard and determined by the City Council, or committee of the City Council, which time shall be not more than 60 days nor less than 20 days after the date of adoption of the resolution. Where the City Council initiates the vacation by Resolution, that Resolution shall fix a time when the proposed vacation will be heard by the City Council or a committee of the City Council.

Section 8. Staff Report.

The City Manager or designee shall prepare a report concerning the proposed vacation, which report shall address the criteria (see Section 11) to be considered by the City Council in determining whether to vacate the street or alley, and such other information as deemed appropriate by the City Manager or designee. In preparing the report, the City Manager or designee shall solicit comments from Law Enforcement, Public Works and other departments of the City, and may solicit comments from other governmental agencies and utility service providers operating within the boundaries of the City, including Fire Districts. The report shall be submitted to the City Council, or the City Council committee hearing the matter, and to the representative of the petitioners, not less than five days before the hearing.

Section 9. Notice of Hearing.

Upon the passage of the resolution fixing the time for hearing the petition or proposal for vacation, the City Clerk shall give not less than 20 day's notice to the time, place and purpose of the hearing by (1) publishing written notice once in the City's official newspaper, (2) posting a placard in a conspicuous place at each end of the street or alley sought to be vacated, and (3) mailing written notice to all petitioners at the address on the petition and all owners of property abutting the street or alley proposed to be vacated, as shown on the records of the Pierce County Assessor. In addition, notice shall be given to the owners of property which lie within 300 feet beyond the street or alley to be vacated, measuring in both directions from the area to be vacated. The City Manager or designee shall send the same written notice to the representative of the petitioners at the address on the petition. The placards shall be highly visible and at least 11 by 14 inches in size, and shall include a map showing the location of the street or alley proposed to be vacated.

Section 10. Protest.

If fifty percent (50%) or more of the owners of the abutting property file written objections to a City Council-initiated vacation with the City Clerk, prior to the time of the hearing, the City shall be prohibited from proceeding with the vacation.

Section 11. Hearing and Committee Report.

The hearing on the petition proposal shall be held before the City Council, or a committee of the City Council, upon the day fixed by Resolution or at the time to which a hearing may be adjourned. Following the hearing, the committee shall report its recommendation on the petition or proposal to the City Council, which may adopt or reject the recommendation. If a hearing is held before a committee, it shall not be necessary to hold a hearing before the City Council.

Section 12. City Council Decision.

Following the hearing and receipt of committee report, if applicable, the City Council shall determine whether to vacate the street or alley. The determination shall include, but not be limited to, consideration of the following criteria:

- A. Whether a change of use or vacation of the street or alley will better serve the public good;
- B. Whether the street or alley is no longer required for public use or public access;
- C. Whether the substitution of a new and different public way would be more useful to the public;
- D. Whether conditions may so change in the future as to provide a greater use or need than presently exists; and,
- E. Whether objections to the proposed vacation are made by owners of private property (exclusive of petitioners) abutting the street or alley or other governmental agencies or members of the general public.

Section 13. Limitation on vacations of streets abutting bodies of water.

If the street or alley to be vacated, or any portion of the street or alley to be vacated, abuts a body of fresh or salt water, the City shall not vacate such street or alley unless the following additional criteria and the requirements are met:

- A. 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;
- B. The City, by Resolution, 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
- C. The vacation is sought to enable the City to implement a plan, adopted by Resolution or Ordinance, that provides 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.

Section 14. Requirements prior to Resolution regarding vacation of streets abutting bodies of water.

Before adopting a Resolution vacating a street or alley under subsection 13.B. above, the City shall:

- A. 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;
- B. 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.
- C. Hold a public hearing on the proposed vacation in the manner required by this ordinance, 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 indicating his or her objection; and
- D. Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under B. of this Section, and that the vacation is in the public interest.

No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. Moneys 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.

Section 15. Vacation by Ordinance.

If the City Council determines to grant the vacation, the action shall be made by Ordinance in conformance with Section 12 and with such conditions or limitations as the City Council deems necessary and proper to preserve any desired public use or benefit. The ordinance may contain a provision retaining or requiring conveyance of easements for construction, repair and maintenance of existing and future utilities and services.

Section 16. Compensation for Vacation.

A. Where a vacation has been initiated by petition, the owners of the property abutting the area vacated shall pay to the City, prior to the effective date of the ordinance vacating the area, a sum equal to one-half of the appraised value of the area vacated plus the full cost of physical closure and road repairs as required by the City Manager or designee; provided, that where the vacation was initiated by the City or was required by the City as a condition of a permit or approval, the owners of property abutting the area vacated shall not be required to pay such sum and provided further that where the area vacated was acquired at public expense, the owners of property abutting the area vacated shall pay to the City a sum equal to the full appraised value of the area to be vacated.

B. Conveyance of other property acceptable to the City may be made in lieu of the required payment, whether required to mitigate adverse impacts of the vacation or otherwise. When the conveyance is made for street purposes, one-half of the fair market value of the land conveyed shall be credited to the required payment. When the conveyance is made in fee for purposes other than street purposes, the full appraised value of the land conveyed shall be credited to the required payment.

C. When the value of the in-lieu parcel is less than the required payment, the petitioners shall pay the difference to the City. When the value of the in-lieu parcel exceeds the required payment, the City shall pay the difference to the petitioners.

Section 17. Appraisals.

A. The City Manager or designee shall determine the appraised value of the area vacated based on an appraisal from a state-

certified real estate appraiser who has an MAI or SRA designation from the Appraisal Institute. To obtain such appraisal, the City Manager or designee shall present to the representatives of the petitioners a list of three such certified and designated appraisers from which the representatives of the petitioners shall select one appraiser. The petitioner shall pay for the appraisal if the City Manager or designee is not satisfied with the appraisal, the City Manager or designee may order a second appraisal from a state-certified real estate appraiser who has an MAI or SRA designation from the Appraisal Institute. The City shall pay for the second appraisal.

B. The City Manager or designee shall use the appraisal having the highest value for the area vacated. The City Manager or designee shall determine the fair market value or full appraisal value of the real property proposed to be granted or dedicated to the City in lieu of cash payment under Section 12 in accordance with the appraisal procedure in subsection A of this section.

Section 18. Payment of Compensation of Conveyance.

After determining the appraisal of the value of the street or alley to be vacated, pursuant to Section 3, the City Manager or designee shall notify the representatives of the petitioners of the amount of compensation. The payment shall be delivered to the City Manager or designee who, upon receipt of the payment, shall transmit it to the City Finance Department for deposit in the street fund and shall make a written report of the payment to the City Council. If the petitioner has been authorized to deliver an instrument granting or dedicating to the City a parcel or parcels of land in lieu of cash payment, as contemplated in Section 15, the City Manager or designee, at the petitioner's expense, may obtain either a policy of title insurance insuring title of the property in the City, or a certificate of title as to the title insurance insuring title of the property in the City, or a certificate of title as to the title thereof, and upon receipt of such policy or certificate, shall transmit it to the City Council.

Section 19. Recording of Ordinance.

A certified copy of the Ordinance vacating a street or alley or part thereof, shall be recorded by the City Clerk in the office of the Pierce County Auditor.

Section 20. Severability.

If any section, sentence, clause or phrase of this ordinance shall be declared invalid or unconstitutional 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 21. Effective Date.

This Ordinance shall be effective five days after publication of the Ordinance Summary and on February 28, 1996.

PASSED by the City Council this 31st day of January, 1996.

CITY OF LAKEWOOD

/S/

Attest: Bill Harrison, Mayor

/S/

Alice M. Bush, CMC, City Clerk

Approved as to Form:

/S/

Daniel B. Heid, City Attorney

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