

ORDINANCE NO. 06-12

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF COVINGTON, KING COUNTY, WASHINGTON
REPEALING CHAPTER 12.55 CMC – STREET
VACATION AND REPLACING WITH A NEW CHAPTER
12.55 CMC - STREET AND PUBLIC EASEMENT
VACATION PROCEDURE**

WHEREAS, the city of Covington incorporated in 1997 and is subject to the vacation of city street process pursuant to Chapter 35.79 RCW and has the authority to establish procedures and requirements for street vacations under RCW 35A.47; and

WHEREAS, the city's current code regulating street vacations, Covington Municipal Code (CMC) Chapter 12.55—Street Vacation, outlines the procedures for the vacation of county roads as set forth in Chapter 36.87 RCW, is not accurate and outdated and should be repealed and replaced in its entirety; and

WHEREAS, the city has established procedures, guidelines, and criteria for granting a vacation of city right-of-way to guarantee that right-of-way vacations are granted in the interest of the public; and

WHEREAS, the Covington City Council held a public hearing on the proposed ordinance on March 13, 2012.

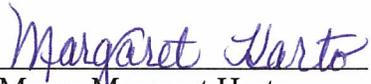
NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Covington Municipal Code chapter 12.55 CMC – Street Vacation is repealed and replaced with a new Chapter 12.55 CMC as provided in the attached Exhibit 1 and fully incorporated herein by this reference.

Section 2. This ordinance shall be in full force and effect five days after proper posting and publication. A summary of this ordinance may be published in lieu of publishing the ordinance in its entirety.

Section 3. If any provision of this ordinance, or ordinance modified by it, is determined to be invalid or unenforceable for any reason, the remaining provisions of this ordinance and ordinances and/or resolutions modified by it shall remain in full force and effect.

Passed by the City Council in an open public meeting on the 13th day of March 2012.



Mayor Margaret Harto

PUBLISHED: March 16, 2012

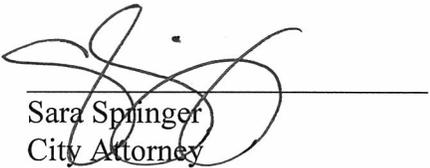
EFFECTIVE: March 21, 2012

ATTESTED:



Sharon Scott
City Clerk

APPROVED AS TO FORM:



Sara Springer
City Attorney

Title 12
STREETS, SIDEWALKS AND BRIDGES
Chapters:
12.55 Street and Public Easement Vacation

Chapter 12.55
STREET AND PUBLIC EASEMENT VACATION

Sections:

- 12.55.010 Authority.
- 12.55.020 Applicability.
- 12.55.030 Initiation of street vacation.
- 12.55.040 Vacation of waterfront streets.
- 12.55.050 Complete application.
- 12.55.060 Sufficiency of signatures.
- 12.55.070 Public Hearing – date fixing.
- 12.55.080 Notice of public hearing.
- 12.55.090 Criteria for granting street vacation.
- 12.55.010 Public hearing and final decision.
- 12.55.011 Compensation for street vacation.
- 12.55.012 Payment of compensation for street vacation.
- 12.55.013 Appeals.

12.55.010 Authority.

Petitions for the vacation of city streets and public easements may be granted by the city council in accordance with the provisions of RCW 35.79 and as provided herein.

12.55.020 Applicability.

(1) This chapter applies to each request for vacation by petition or initiated by the city council and includes streets, alleys, public easements, access tracts, undeveloped right-of-way, or a portion thereof. For the purpose of this chapter "street vacation" refers to a public right-of-way and easements refer to "public easements".

(2) If the street to be vacated is shown on the official zoning and street map, the approved street vacation will also change the official zoning and street map to remove the vacated street.

12.55.030 Initiation of street vacation.

(1) A vacation may be initiation by the owners of more than two-thirds of the property abutting a street, alley, or portion thereof, sought to be vacated, or in the case of an easement, the owners of more than two-thirds of the property underlying the portion of the easement to be vacated.

(2) The city council may initiate a street vacation by resolution without a petition by property owners. The resolution shall contain a legal description of the subject property.

12.55.040 Vacation of waterfront streets.

(1) The city shall not vacate a street, alley or public easement governed by this chapter if any portion of the subject property abuts a body of water unless:

(a) The vacation is sought to enable the city acquire the subject property for port purposes, beach or waterfront access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

(b) The city council, by resolution, declares that the subject property is not presently being used as a street, alley, or public easement and that the subject property 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 subject property abuts, had the subject property included in the plan not been vacated.

(2) Before adopting a resolution vacating subject property under subsection (1)(b) of this section, 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 subject property;

(b) Conduct a study to determine if the subject property 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; and

(c) Make a finding that the subject property is not suitable for any of the purposes listed under subsection (2)(b) of this section, and that the vacation is in the public interest.

(3) No vacation under this section shall be effective until the fair market value has been paid for the subject property. Money 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.

12.55.050 Complete application.

(1) A petitioner(s) for a street vacation shall submit a complete application to the city that includes the following, unless otherwise determined by the director:

(a) A vacation petition with supporting affidavits on forms provided by the city;

(b) A legal description of the street, alley, or easement, or part thereof to be vacated. The legal description shall be prepared by a surveyor licensed in the state of Washington;

(c) For each petitioner, a title report indicating ownership and providing a legal description of the property owned by the petitioner;

(d) A site plan showing the street, alley, easement, or part thereof to be vacated and showing all properties and any developed or undeveloped rights-of-way within 500 feet of the street, alley, easement, or part thereof, to be vacated;

(e) An appraisal, prepared by an appraiser licensed in the state of Washington with an MAI designation, establishing the fair market value of the street, alley, or part thereof to be vacated. An appraisal is not required if only a utility easement is proposed to be vacated;

(f) Mailing labels of property owners, in accordance with the King County assessor's office, located within 500 feet of any boundary of the street, alley, or easement, or part thereof, to be vacated;

(g) Other information as deemed necessary by the director to consider the requested vacation; and

(h) The application fee in the amount as set forth in the current fee resolution.

(2) When deemed necessary by the director, an additional deposit adequate to cover other direct costs will be required. The department may elect to have the petition reviewed by a city-approved and hired consultant. For reviews completed by a consultant, the city is authorized to charge the applicant the actual costs charged by the consultant, in addition to the city's application fee.

12.55.060 Sufficiency of signatures.

For the purpose of determining the sufficiency of signatures of property owners on a petition for street vacation, the following rules shall govern:

(a) Where property is subject to a mortgage, the signature of the mortgagor shall be sufficient.

(b) Where property is subject to a contract of purchase, the signature of the contract vendee shall be sufficient.

(c) Where property is subject to a deed of trust, the signature of the grantor shall be sufficient.

(d) In the case of ownership by partnership or corporation, the signature of any officer authorized by the bylaws or resolution of the partners or board of directors shall be sufficient when evidenced by a copy of the section of bylaws or resolution granting such authority.

(e) Where property is subject to a long-term lease (in excess of 25 years) the signature of either the lessor or lessee shall be sufficient.

(f) In the case of property subject to a life estate, the signature of the holder of the life estate shall be sufficient.

(g) In the case of property owned by the estate of a decedent or incompetent, the signature of the duly qualified personal representative or guardian shall be sufficient.

12.55.070 Public hearing – date fixing.

Upon receiving a completed application for vacation, or upon passage of a resolution by the city council seeking vacation, the city council shall, by resolution, establish a date and time for an open record public hearing before the hearing examiner. In cases where street vacation is initiated by city council resolution, the resolution seeking vacation shall include the date and time of the open record public hearing before the hearing examiner. A public hearing for a street vacation petition shall be scheduled no more than sixty (60) days and no less than twenty (20) days after the city council passes the resolution fixing the date and time for the public hearing.

12.55.080 Notice of public hearing.

(1) Notice of a petition or city council resolution seeking any street vacation shall contain the minimum information as follows:

(a) The city file number;

(b) A statement that a petition has been filed or resolution has been passed to vacate the street or alley, along with a description of the street or alley to be vacated;

(c) The date, time, place, and type of the public hearing before the hearing examiner; and,

(d) A statement of the right of any person to submit written comments to the city prior to the public hearing or appear before the hearing examiner at the public hearing to provide comment.

(2) At least twenty (20) calendar days before the public hearing, public notice shall be distributed as follows:

(a) Mailed notice shall be sent to each resident living immediately adjacent to the street, alley, or easement, or part thereof, to be vacated;

(b) Mailed notice shall be sent to the property owners within 500 feet of any boundary of the street, alley, or easement, or part thereof, to be vacated;

(c) Mailed notice shall be sent to utility agencies that have facilities located within the city or that possess a franchise agreement for providing utility service within the city;

(d) A copy of the notice shall be published in the city's official newspaper;

(e) A copy of the notice shall be posted in three public places within the city; and

(f) A copy of the notice shall be provided on a public notice board, as prescribed by the city, located on the street, alley, or easement, or part thereof, to be vacated.

(3) If fifty (50) percent or more of the abutting property owners file written objection to a city council initiated vacation with the city clerk prior to the time of the scheduled public hearing, then the city council shall be prohibited from proceeding with the public hearing or granting the vacation. The calculation of the fifty percent threshold under this section shall be based on front footage, in the case of streets and alleys, and square footage of the easement area in the case of public easements.

12.55.090 Criteria for granting street vacation.

The hearing examiner and city council shall review the requested vacation provided the applicant can demonstrate that:

(a) Granting the vacation will not conflict with the general purposes and objectives of the city's comprehensive plan regarding land use, streets, utilities, drainage, parks, trails, and open space;

(b) The street, or portion thereof, is not likely to serve a useful public purpose both now and in the future, which cannot be met through use of easements for a specific purpose, or the vacation will best serve the public interest;

(c) The vacated area will not increase the number of single-family building sites or multi-family density. This may be mitigated by appropriate conditions on the vacated area; and

(d) The request for vacation was not initiated to correct a condition created by an applicant in violation of city ordinance.

12.55.010 Public hearing and final decision.

(1) The hearing examiner shall hold an open record public hearing on vacations and provide a recommendation to the city council. The hearing held before the hearing examiner shall be the sole open public hearing.

(2) The city council may adopt, reject, or modify the hearing examiner's recommendation based on the criteria demonstrated by the applicant in CMC 12.55.090.

(3) The city may condition the vacation to retain easements for the construction, repair, and maintenance of public utilities and services and establish easement trails for pedestrians and nonmotorized vehicular travel. The city council shall grant easements to utility agencies within the right-of-way of said vacation to maintain the existing location of its facilities. Such easements may also be granted to utility agencies to allow for future location of facilities as reasonably anticipated by the utility agency.

(4) The final decision of the city council shall be adopted by ordinance.

(5) The adopting ordinance shall be filed with the city clerk's office and recorded with the King County department of records and elections.

12.55.011 Compensation for street vacation.

(1) The final ordinance passed to vacate a street, alley, public easement, or part thereof, shall not become effective until the owners of property abutting upon the street, alley, or part thereof, provide full compensation to the city.

(2) The amount of compensation owed to the city for the vacated street, alley, public easement, or part thereof, shall be recommended by the hearing examiner and shall be determined by the city council according to the following criteria:

(a) The full appraised value owed for a street of which public funds have been expended, through an approved capital improvement project, for the acquisition or construction of the street or property.

(b) Seventy-five (75) percent of the full appraised value owed for a street for which funds have been expended for improvements and maintenance within five (5) years from the date of the petition;

(c) Fifty (50) percent of full appraised value owed for streets for which no funds have been expended in the acquisition, improvements, and maintenance;

(d) Administrative costs of the vacation owed for street vacation issued as a matter of the laws of 1889-1890 and affirmed by city council action;

(e) Real property of equal or greater value, or public right-of-way which has value for access, may be accepted in lieu of cash compensation;

(f) Any combination of subsections (2)(a)-(e) of this section may be accepted, provided that the total value of the combined compensation does not total more than the maximum amount of monetary compensation allowed under subsections 2(a)-(c) of this section.

(3) When a street is vacated for a governmental agency, compensation shall be in accordance with the classification of the street, except that some or all of the compensation may be waived at the discretion of the city council if it will fulfill a public purpose.

12.55.012 Payment of compensation for street vacation.

(1) The compensation determined to be owed shall be a condition of the vacation and shall be paid to the city by the applicant within ninety (90) days of the approval of the adopting ordinance by the city council. The adopting ordinance shall not become effective until the compensation owed to the city is paid in full.

(2) 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 projects within the city.

(3) A development proposal subject to a street vacation shall not be issued approvals or development permits until the street vacation has been acted upon by the city council and any required compensation has been paid to the city.

(4) If the applicant fails to pay the required compensation sum within ninety (90) days, the adopting ordinance passed by the city council shall be rescinded and the vacation shall be void.

12.55.013 Appeals.

In the event the city council denies the vacation petition, an appeal may be filed following the procedures for a Type 4 application outlined in Chapter 14.45. CMC for a Type 4 decision.