

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE 2123

AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON AMENDING THE CITY'S STREET VACATION ORDINANCE, CHAPTER 12.48 SMC, BY UPDATING, CLARIFYING, AND REVISING PROVISIONS RELATED TO PROCEDURES, COMPENSATION, AND OWNERSHIP, IN ORDER FOR THE CITY'S STREET VACATION PROCESS TO BE MORE EFFICIENT, COMPREHENSIVE, AND CONSISTENT WITH STATE STATUTORY REQUIREMENTS

THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON DO HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 12.48 of the Snohomish Municipal Code is hereby amended to read as follows:

**Chapter 12.48
STREET VACATION**

Sections:

- 12.48.010 Petition-Fee-Subdivision vacation
- 12.48.015 Preapplication procedure
- 12.48.020 Petition-Procedure-Investigation-Survey
- 12.48.030 Resolution setting public hearing
- 12.48.040 Compensation
- 12.48.050 Nonuser statute
- 12.48.060 Public hearing notice-Fifty percent objection
- 12.48.070 Appraisal-Fees
- 12.48.080 Granting criteria
- 12.48.090 Vacation ordinance
- 12.48.100 Notice of action to auditor and appraiser
- 12.48.110 Use of proceeds of vacation
- 12.48.120 Title to vacated street or alley

12.48.010 Petition-Fee-Subdivision Vacation

- A. The owner of an interest in any real estate abutting on any street or alley who may desire to vacate any street or alley, or any part thereof, shall petition the City Council for the vacation of such street or alley or any part thereof in the manner hereinafter provided in this chapter and pursuant to Chapter 35.79 RCW. Such petition shall be on such form as may be prescribed by the City, shall contain a full and correct legal description and map of the property sought to be vacated, and shall be signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated.

- B. Fees to be paid on the filing of a petition shall be established by resolution of the City Council. Fees shall include a potentially refundable deposit for the cost of appraisals, surveys, engineering and legal costs, and other costs incurred by the City in the street vacation process. Until all fees have been paid in full, no action shall be taken on the petition.
- C. If a proposed street vacation is part of a proposed vacation of a subdivision or short subdivision, then the procedure for vacation of subdivisions under RCW 58.17.212 shall be used and complied with, and the street vacation procedure under this chapter shall not be used. (Ord. 1634, 1988)

12.48.015 Preapplication Procedure

- A. Prior to submitting a petition for the vacation of any street or alley, any abutting property owner may submit a written request to the City Clerk for a preapplication meeting with the City Council to discuss the proposal. The request shall include a description of the right-of-way for which vacation is intended to be sought, a statement of the applicant's reasons for requesting vacation, and a statement as to how the requested vacation meets the criteria for granting a vacation as set forth in SMC 12.48.080. No fee shall be required in connection with the preapplication meeting request.
- B. Upon receipt of a request for a preapplication meeting, the City Clerk shall schedule the meeting. At the meeting, the City Council may hear from the applicant, other interested parties, and City staff concerning the proposal. The Council may preliminarily determine if there are any of the granting criteria that the proposal appears incapable of complying with. This preliminary determination shall not be final or binding in any respect. If the applicant thereafter decides to proceed with a street vacation petition, all provisions of this chapter shall apply.

12.48.020 Petition-Procedure-Investigation-Survey

- A. Upon receiving a petition, payment of fees, and deposit for the vacation of a City street or alley, and upon completion of the report referenced in Subsection C below, from the Public Works Director or designee (hereafter "Public Works Director"), the City Clerk will place the matter upon the agenda of a meeting of the City Council. The City Clerk shall notify the petitioners in writing of the date the matter shall come before the City Council.
- B. The City Clerk shall notify the Public Works Director of all proposed vacations. It shall be the duty of the Public Works Director to investigate and report on the matters set forth in SMC 12.48.020C.
- C. Prior to the presentation of the petition to the City Council, the Public Works Director shall investigate and report on the following:
 - 1. Ownership of the property abutting on the street or portion sought to be vacated. Proof of ownership of abutting property by the title insurance or certificates may

- be required, such proof to be furnished by, and at the expense of, the petitioners;
2. Whether and in what respect the public may be benefited or harmed by the vacation;
 3. Whether the public benefit of the area's use is insufficient to justify the cost of maintenance;
 4. Which property or properties will be directly benefited or adversely affected by the vacation, and in what way;
 5. What effect the vacation will or may have upon property served or which might be served by said vacated street, and whether said street has been opened or constructed, and if so, to what standard;
 6. How said street relates to other streets and highways, and whether other portions of the subject street or alley have already been vacated;
 7. Whether the substitution of an alternate way would be more useful to the public;
 8. Whether future changes in conditions may increase public use or need;
 9. How and when the street or alley sought to be vacated became a public right-of-way;
 10. Whether any utilities now exist in said street, or whether such street may be reasonably necessary for future utility uses;
 11. The necessity or desirability of the City retaining an easement or the right to exercise and grant easements for emergency vehicle access and construction, repair, and maintenance of public utilities and services over the land sought to be vacated;
 12. Whether any abutting owner would become landlocked or its access substantially impaired; i.e., whether there is an alternative motive ingress and egress, even if less convenient;
 13. If the right-of-way abuts a body of water, how the proposed vacation would or would not comply with the requirements set forth in RCW 35.79.035; and
 14. Any other matters relevant to the vacation of the street or alley.
- D. The Public Works Director shall determine whether or not the location and legal description of the street or alley proposed for vacation are sufficiently known to the City so that an accurate legal description of the proposed vacation may be made and so that the location of the property proposed for vacation can be known with certainty. If the Public Works Director determines that these matters are not known or are not

accurately known, then the City shall notify the petitioners of the necessity of having an accurate professional survey of the property proposed for vacation with the boundaries of the proposed vacation marked upon the ground and an accurate legal description by a licensed surveyor of the proposed vacation to be furnished to the City at the applicants' expense. The City shall not proceed further upon the vacation petition and a public hearing shall not be set until such a survey has been done and legal description received. (Ord. 1364, 1977)

12.48.030 Resolution Setting Public Hearing

- A. The City Council shall consider the report of the Public Works Director, shall consider whether the Council will require that the City be compensated as a condition of the vacation, and shall determine whether to adopt a resolution setting a public hearing on the proposed vacation. The Council will generally make its determination regarding compensation before it adopts the resolution, but the Council shall retain the discretion to review its determination following the public hearing.
- B. For both petition and Council-initiated vacations proposed for public hearing, the City Council shall adopt a resolution setting a time for the hearing, which is not less than 20 nor more than 60 days from the date of passage of the resolution.

12.48.040 Compensation The City Council shall require the petitioners to compensate the City of Snohomish in accordance with the following criteria:

- A. When the street or alley has been part of a dedicated public right-of-way for twenty-five years or more, or when the street or alley or portions thereof were acquired at public expense, an amount that does not exceed the full appraised value of the area vacated;
- B. When the street or alley has not been part of a dedicated public right-of-way for twenty-five years or less, or when the street or alley or portions thereof were not acquired at public expense, an amount which does not exceed one-half of the appraised value of the area vacated;
- C. Compensation may be waived or reduced either when the vacation is initiated by the City of Snohomish or when the City Council deems it to be in the best interest of the City in accordance with the following criteria:
 - 1. When the abutting property is owned by a governmental entity or by a non profit corporation whose purpose is for the necessary support of the poor or infirm; or
 - 2. When the street or alley was vacated by the provisions of Section 32, Chapter 19, Laws of 1889-90 (as described in SMC 12.48.050). (Ord. 1364, 1977; Ord. 1996, 2001)

12.48.050 Nonuser Statute

- A. Section 32, Chapter 19, Laws 1889-90, is known as the “nonuser” statute and reads as

follows: “Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time.”

- B. The nonuser statute was amended in 1909 by adding a significant proviso, which is set forth in the current, codified version of the statute, which reads as follows:

RCW 36.87.090

Vacation of road unopened for five years -- Exceptions.

Any county road, or part thereof, which remains unopen for public use for a period of five years after the order is made or authority granted for opening it, shall be thereby vacated, and the authority for building it barred by lapse of time: PROVIDED, That this section shall not apply to any highway, road, street, alley, or other public place dedicated as such in any plat, whether the land included in such plat is within or without the limits of an incorporated city or town, or to any land conveyed by deed to the state or to any county, city or town for highways, roads, streets, alleys, or other public places.

- C. The proviso in RCW 36.87.090 exempts streets dedicated in a plat from the nonuser statute. In applying this proviso, the statute cannot have a retroactive effect, if it would interfere with vested rights. Thus, where a county road was dedicated and unopened for five years prior to the 1909 proviso and was not annexed into a city during said five year period, the right of abutting property owners to the vacated road vested and is unaffected by the proviso. On the other hand, where the five-year period had not run by the time of the 1909 proviso, the abutting property owner did not have a vested right and the proviso “saved” the unopened road from automatic vacation.
- D. Although the nonuser statute applies without regard to the City’s street vacation process under Ch. 35.79 RCW, property owners who abut a street vacated under the nonuser statute may nonetheless apply to the City to “formally” vacate the street by ordinance. Abutting property owners may use this method to clear title to right-of-way vacated under the nonuser statute rather than filing a quiet title action in Superior Court, which can be more costly and cumbersome than the street vacation ordinance process. Accordingly, the City will consider petitions to formally vacate streets or alleys that have been vacated by operation of the nonuser statute, if said streets or alleys were dedicated and unopened as county roads for five years prior to the 1909 proviso and if the City has not acquired said streets or alleys by prescription /adverse possession, purchase, eminent domain, or other means. The burden shall be on the property owner requesting vacation to provide all necessary title and historical information to the City to demonstrate that the nonuser statute operates to vacate the subject property.

12.48.060 Public Hearing Notice-Fifty Percent Objection

- A. Upon the passage of the resolution referenced in SMC 12.48.030, the City Clerk shall give twenty days notice of the pendency of the petition by a written notice posted in

three of the most public places in the City and a like notice in a conspicuous place on the street or alley sought to be vacated. The said 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 for the hearing of the petition. In all cases where the proceeding is initiated by resolution of the City without a petition having been 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, in addition to notice hereinabove required, there shall be given by mail at least fifteen days before the date fixed for the hearing, a similar notice to the owners or reputed owners of all lots, tracts, or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, or within 300 feet thereof, as shown on the rolls of the County Treasurer, directed to the addresses thereon shown. Failure to send notice by mail to any such property owner where the current address of such property owner is not a matter of public record shall not invalidate any proceedings in connection with the proposed street vacation. (Ord. 1364, 1977) The costs of the notice shall be borne by the applicant.

- B. In all cases, the City shall be prohibited from proceeding further with the street vacation process, if fifty percent or more of the abutting property owners file written objection to the proposed vacation with the City Clerk prior to the time of hearing.

12.48.070 Appraisal-Fees

- A. In all cases where the City Council requires compensation for the vacated right-of-way, an appraisal of the right-of-way proposed for vacation shall be made. Said appraisal shall be by a professional appraiser selected by the City unless otherwise determined by the Public Works Director. The cost of the appraisal shall be borne by the applicant.
- B. When the cost of appraisal exceeds the deposit, the petitioners, upon being given notice of that fact, shall forthwith remit the balance of the appraisal cost to the City Treasurer. In the event the cost of appraisal is less than the deposit, the balance shall be refunded to the petitioners or may be applied to the compensation for the area to be vacated at the election of the petitioners. (Ord. 1364, 1977) In the typical situation when compensation is determined prior to Council adoption of the resolution setting a public hearing, no public hearing shall be set until the appraisal is received by the City.

12.48.080 Granting Criteria

- A. The City Council shall not vacate any street, alley, or any parts thereof, if any portion thereof abuts any body of saltwater or freshwater, unless such vacation is sought to enable the City or State to acquire the property for port purposes, boat moorage or launching sites, park, viewpoint, recreational, or educational purposes, or other public uses and unless the requirements of RCW 35.79.030 and this chapter are complied with.
- B. The City Council shall use the following criteria for deciding upon all street vacation

petitions:

1. That the vacation will provide a public benefit, and/or will be for a public purpose, which public benefit may consist of economic and business support derived by the community from the petitioners;
 2. That the right-of-way vacation shall not adversely affect the street pattern or circulation of the immediate area or the community as a whole;
 3. That the public need shall not be adversely affected;
 4. That the right-of-way is not contemplated or needed for future public use;
 5. That no abutting owner becomes landlocked or its access will not be substantially impaired; i.e., there must be an alternative motive ingress and egress, even if less convenient; and
 6. That provision has been made for utility easements, when needed for the right to construct, repair, and maintain public utility facilities.
- C. The City Council may, at the time of its public hearing, determine that the City may retain an easement or right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services. (Ord. 1364, 1977; Ord. 1996, 2001)

12.48.090 Vacation Ordinance If the City Council determines to grant such petition, or any part thereof, the Council shall authorize by ordinance the vacation of such street or alley, or any part thereof. Such ordinance may provide for the retention by the City of all easements or rights in respect to the vacated land for the construction or repair and maintenance of public utilities and services. If the City Council determines that compensation shall be paid as a condition of the vacation, then the ordinance shall not be published or become effective until all compensation and fees and costs have been paid in full by the petitioners and all conditions imposed by the City Council have been complied with. When there are multiple properties which are adjacent to right-of-way which is petitioned for vacation, any one or more of the applicants may pay the total compensation, fees and costs in order to complete the vacation and to cause the ordinance to be published and become effective. Such payment shall not affect the vacated right-of-way vesting to the adjacent property owner. If the compensation is not paid and the conditions are not complied with within one year from adoption of the ordinance, then the ordinance shall be void unless the one year period is extended by ordinance of the City Council. (Ord. 1364, 1977)

12.48.100 Notice of Action to Auditor and Appraiser A certified copy of the ordinance vacating any such street or alley, or part thereof, shall be filed by the City Clerk with the Snohomish County Auditor's Office. Following the recording of the ordinance, a certified copy shall be sent to the Snohomish County Treasurer's Office. (Ord. 1364,

1977)

12.48.110 Use of Proceeds of Vacation One-half of the revenue received by the City as compensation for area vacated under this chapter shall be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the City. (Ord. 1996, 2001)

12.48.120 Title to Vacated Street or Alley

A. Pursuant to RCW 35.79.040, and regardless of who pays the compensation, fees and expenses of vacation, vacated streets, or alleys shall belong to the abutting property owners, one-half to each, provided that:

1. When only part of the street or alley is requested to be vacated, only that portion of the adjacent right-of-way up to the center line shall belong to the abutting owner; or
2. When the street or alley requested to be vacated is wholly contained within a subdivision and is part of the boundary of the subdivision, the entire street shall belong to the owner or owners of the property within the vacated subdivision, in compliance with RCW 58.17.212; or
3. When dictated by the particular circumstances of the situation, ownership of the underlying fee of a street or alley may be allocated by the City as equally and fairly as possible.

B. The ownership of the vacated street or alley shall be set forth in the street vacation ordinance in accordance with SMC 12.48.120A.

Section 2. Effective Date. This ordinance shall take effect five days after publication by summary.

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this ordinance.

PASSED by the City Council and **APPROVED** by the Mayor this 3rd day of April, 2007.

CITY OF SNOHOMISH

By _____
LARRY COUNTRYMAN, Acting Mayor

Attest:
By _____
TORCHIE COREY, City Clerk

Approved as to form:
By _____
GRANT K. WEED, City Attorney