

ORDINANCE NO. 2023-09-029

AN ORDINANCE OF THE CITY OF BELLINGHAM REPEALING THE CITY'S STREET VACATION POLICIES AND PROCEDURES IN BELLINGHAM MUNICIPAL CODE (BMC) CHAPTER 13.48, ADOPTING NEW CITY STREET VACATION POLICIES AND PROCEDURES IN BMC CHAPTER 13.50 AND AMENDING BMC 1.26.050 TO REFLECT THAT THE CITY COUNCIL'S DECISION ON A STREET VACATION IS A LEGISLATIVE MATTER.

WHEREAS, the City of Bellingham adopted its street vacation policies and procedures in 1978 and amended them in 1978, 1986, 1988, 1991, and 1998;

WHEREAS, the City's current street vacation policies and procedures are codified in BMC Chapter 13.48, Street Vacations;

WHEREAS, the City's current street vacation policies and procedures are out-of-date and incomplete;

WHEREAS, the City Council desires to repeal the City's current street vacation policies and procedures in BMC Chapter 13.48 and replace them with new ones;

WHEREAS, the new street vacation policies and procedures will be codified in BMC Chapter 13.50; and

WHEREAS, THE City Council desires to amend BMC 1.26.050 to reflect that the City Council's decision on a street vacation is a legislative matter.

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1: BMC Chapter 13.48 is repealed in its entirety.

Section 2: A new BMC Chapter 13.50 entitled "Street Vacations" is adopted as follows:

- 13.50.010 Purpose.
- 13.50.020 Applicability.
- 13.50.030 Initiation of proceedings.
- 13.50.040 Petition for vacation brought by abutting property owners.
- 13.50.050 Objection by property owners to vacation initiated by City Council resolution.
- 13.50.060 Technical Review Committee review of street vacation petition.
- 13.50.070 Date of public hearing.
- 13.50.080 Notice of public hearing.

- 13.50.090 Staff report preparation.
- 13.50.100 Public hearing procedures.
- 13.50.110 Criteria for granting street vacation.
- 13.50.120 Vacation of waterfront streets.
- 13.50.130 Right to reserve easements.
- 13.50.140 Voluntary agreement between city and petitioner.
- 13.50.150 Final decision.
- 13.50.160 Appraisals and appraisal fees.
- 13.50.170 Title to vacated street or alley.
- 13.50.180 Vested rights not affected.
- 13.50.190 City use of revenue.

13.50.010 Purpose.

This chapter establishes the procedure and criteria that the city will use to decide upon vacation of streets and alleys.

13.50.020 Applicability.

This chapter applies to requests for vacation of street and alley rights-of-way. This chapter shall not apply to vacation or termination of other types of public easements. As used in this chapter, the term "subject right-of-way" means the street or alley or portions thereof, sought to be vacated.

13.50.030 Initiation of proceedings.

A vacation may be initiated by a:

- A. Petition from the owners of more than two-thirds of the property abutting on both sides of the part of the subject right-of-way to be vacated, or
- B. Resolution by the city council.

13.50.040 Petition for vacation brought by abutting property owners.

- A. The owners of an interest in any real estate abutting upon any street or alley may petition the city for vacation of the subject right-of-way.

B. The petitioner shall submit a street vacation petition to the Planning Department that includes the following:

1. A signed vacation petition by the property owners that comprise more than two-thirds of the overall frontage on the subject right-of-way based on front footage;
2. For each property owner, a title report and/or Whatcom County tax statement that demonstrates ownership and providing a legal description of the property owned by the property owner;
3. A vicinity map showing the proposed vacation area and all abutting properties;
4. The vacation application fee as established by resolution;
5. A brief narrative describing the purpose of the proposed vacation and future use of proposed vacation area; and
6. Any additional information or material that the city determines to be necessary to review the street vacation petition.

13.50.050 Objection by property owners to vacation initiated by City Council resolution.

If fifty percent or more of the abutting property owners (based on the total number of owners who abut the subject right-of-way) file written objections to a city council-initiated vacation with the city clerk or Planning Department prior to the time of hearing, then the city shall be prohibited from proceeding with the public hearing or approving the vacation.

13.50.060 Technical Review Committee review of street vacation petition.

A. The Planning Department initiates review of the vacation petition by the Technical Review Committee, which is made up of representatives from the Planning, Parks, Public Works, Legal, Fire and Police Departments.

B. The Technical Review Committee:

1. Reviews the street vacation petition for consistency with the criteria in BMC 13.50.110;
2. Formulates a written recommendation of denial or approval with conditions that includes an analysis of the criteria in BMC 13.50.110; and

3. Provides its written recommendation to the petitioner.

C. After receiving the Technical Review Committee's recommendation, petitioner determines whether to proceed with the vacation petition and request a public hearing before the hearing examiner. The petitioner must pay the public hearing fee set by resolution before the city schedules the public hearing.

13.50.070 Date of public hearing.

Upon petitioner paying the public hearing fee or upon passage of a resolution by the city council seeking vacation, the city council shall, by resolution, schedule a time when the city will hold a public hearing on the proposed vacation. The hearing will be no more than sixty days or less than twenty days after the date of passage of the resolution scheduling the public hearing.

13.50.080 Notice of public hearing.

A. Content. The Office of the Hearing Examiner shall prepare a public notice containing the following information:

1. A statement that a request to vacate the subject right-of-way will be considered by the hearing examiner;
2. A statement of the time and place of the public hearing before the hearing examiner;
3. A location description in non-legal language along with a vicinity map that identifies the subject right-of-way proposed to be vacated;
4. A statement that the vacation file is available for viewing at the Planning Department; and
5. A statement of the right of any person to submit written comments to the hearing examiner prior to or at the public hearing and to appear at the public hearing to give comments orally.

B. Distribution of Notice of Hearing. At least twenty calendar days before the public hearing, the Office of the Hearing Examiner shall distribute the public notice as follows:

1. A copy will be sent, by mail, to the owner of each piece of property within five hundred feet of any boundary of the subject right-of-way;
2. A copy will be sent, by mail, to each resident living immediately adjacent to or on the subject right-of-way;
3. A copy will be published in the official newspaper of the city, except no vicinity map shall be required;
4. A copy will be posted in three of the most public places in the city such as city hall, the library and the county courthouse; and
5. A copy will be posted in a conspicuous place abutting or on on the subject right-of-way in the manner set out in subsection (3) of this section.
6. A copy will be emailed to each neighborhood association and Mayor's Neighborhood Advisory Committee representative

C. Public Notice Sign. The petitioner shall provide for and erect public notice signs at least twenty calendar days before the public hearing as follows:

1. The sign shall be designed and constructed to city standards. A copy of the notice described in subsection (1) of this section and a vicinity map shall be attached to each sign.
2. The Planning Department is authorized to develop the standards for the public notice signs necessary for implementation of this section.
3. One sign shall be erected in a conspicuous place on the subject right-of-way. The Planning Department may require that additional signs be erected on or near the subject right-of-way and placed so that the signs are conspicuously visible from an improved public right-of-way not subject to the vacation request. The Planning Department shall approve the location of each sign.
4. The petitioner shall remove all signs within seven calendar days after the public hearing.

13.50.090 Staff report preparation.

The Planning Department shall prepare a staff report for the public hearing before the hearing examiner that contains the following information:

- A. All pertinent application materials submitted by the petitioner;

- B. All comments regarding the vacation received in the Planning Department prior to distribution of the staff report;
- C. A copy of the technical review committee's recommendation of approval or denial of the requested vacation including an analysis of the criteria in BMC 13.50.110; and
- D. The appraised value of the subject right-of-way based on a recent appraisal of the subject right-of-way obtained by the city at the petitioner's expense.

13.50.100 Public hearing procedures.

- A. In accordance with BMC 2.56.050 C. 4., the hearing examiner shall hold a public hearing on the requested vacation. The hearing shall be open to the public. The hearing examiner shall make a complete electronic sound recording of each hearing.
- B. The hearing examiner may continue the hearing if, for any reason, it is unable to hear all the public comments on the vacation, or if the hearing examiner determines that it needs more information on the vacation. If, during the hearing, the hearing examiner announces the time and place of the next hearing on the vacation, no further notice of the hearing need be given.
- C. At the outset of the hearing, the Planning Department director or designee shall provide an analysis of the requested vacation in relation to the provisions of this chapter and the applicable provisions of the comprehensive plan. The Planning Department director or designee shall also present the technical review committee's recommendation on the requested vacation.
- D. Any interested person may participate in the public hearing in either or both of the following ways:
 - 1. By submitting written comments to the hearing examiner either by delivering the comments to the Planning Department prior to the hearing or by giving the comments directly to the hearing examiner at the hearing; and
 - 2. By appearing in person, or through a representative, at the hearing and making oral comments directly to the hearing examiner. The hearing examiner may reasonably limit the extent of these oral comments to facilitate the orderly and timely conduct of the hearing.
- E. After the public hearing, the hearing examiner shall issue written findings of fact, conclusions of law, and recommendation on whether city council should approve the

requested vacation of the subject right-of-way based on the criteria in BMC 13.50.110. The hearing examiner shall forward the findings of fact, conclusions of law, and recommendation along with the record from the public hearing to city council for its consideration and decision.

13.50.110 Criteria for granting street vacation.

A. The decision on a vacation petition is a legislative determination by city council based upon the complete record from the public hearing before the hearing examiner including the hearing examiner's findings of fact, conclusions of law, and recommendation. City Council shall consider the complete record and make its decision at a closed record hearing in accordance with BMC 1.26.050. The city council may, in its discretion, vacate a street or alley governed by this chapter if:

1. The vacation is in the public interest; and
2. The subject right-of-way is not currently necessary for transportation or other right-of-way purposes, nor likely to be in the future. Transportation purposes are assumed to include vehicular, pedestrian, and other forms of transportation; and
3. No existing parcel, lot of record, or tract will be denied all access as a result of the vacation of the subject right-of-way; and
4. If any portion of the street or alley abuts a body of fresh or salt water, the requirements of BMC 13.50.120 are met; and
5. The street or alley is not adjacent or leading to any park, open space, view, natural area, or other natural or artificial attraction.

B. The city council may consider any other fact or issue that is part of the record from the public hearing it deems relevant when deciding whether to vacate a street or alley, including, but not limited to, the street or alley's proposed use after vacation.

C. The city council may accept the recommendation of the hearing examiner or reject the same in whole or in part. If city council rejects the recommendation in whole or in part, then it shall make findings of fact, and conclusions of law explaining its decision.

13.50.120 Vacation of waterfront streets.

A. The city shall not vacate a street or alley governed by this chapter if any portion of the subject right-of-way abuts a body of fresh or salt water unless:

1. The vacation is sought to enable the city to acquire the subject right-of-way for port purposes, beach or waterfront access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

2. The city council, by resolution, declares that the subject right-of-way is not presently being used as a street or alley and that the subject right-of-way 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 comparable or improved public access to the same shoreline area to which the subject right-of-way abuts, had the subject right-of-way included in the plan not been vacated.

B. Before adopting a resolution 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 subject right-of-way;

2. Conduct a study to determine if the subject right-of-way 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

3. Make a finding that the subject right-of-way is not suitable for any of the purposes listed under subsection B.2. of this section, and that the vacation is in the public interest.

C. No vacation under this section shall be effective until the fair market value has been paid for the subject right-of-way. 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.

13.50.130 Right to reserve easements.

In vacating a street or alley or governed by this chapter, the city council may reserve for the city any easements or the right to exercise and grant any easements for the following purposes:

A. Public utilities and services;

B. Pedestrian trail purposes; and

C. Any other type of easement relating to the city's right to control, use and manage rights-of-way.

13.50.140 Voluntary agreement between city and petitioner.

At any time prior to the city council's final decision on the vacation, the petitioner and city staff may enter into a voluntary agreement containing special terms that would apply to the vacation if the application is approved. These special terms may be included in the draft ordinance vacating the subject right-of-way. City staff will advise the city council of the terms contained in the voluntary agreement. The city council may vacate a street, alley or easement pursuant to such an agreement, subject to the criteria in BMC 13.50.110.

13.50.150 Final decision.

A. Following consideration of the complete record from the public hearing at a closed record hearing on the proposed vacation conducted in accordance with BMC 1.26.050, the city council shall, by motion approved by a majority of the entire membership, either (a) approve the vacation and adopt an ordinance vacating the subject right-of-way; (b) deny the vacation; or (c) remand the matter to the hearing examiner with instructions for further proceedings.

B. The city council may require the following as conditions for approval of the vacation:

1. Compensation:

a. Monetary compensation to be paid to the city in an amount of up to one-half the appraised value for the subject right-of-way; provided, that compensation may be required in an amount of up to the full appraised value of the subject right-of-way if either of the following applies to the street or alley:

i. It has been part of a dedicated public right-of-way for twenty-five years or more; or

ii. The subject right-of-way or portions thereof were acquired at public expense;

b. The grant of a substitute public right-of-way or other public amenity which has value at least equal to the subject right-of-way ; or

c. Any combination of subsections a. and b. of this subsection, provided, that the total value of the combined conditions shall not total more than the maximum amount of monetary compensation allowed under subsection B.1.a. of this section.

2. The reservation of easements as provided in BMC 13.50.130

3. Any special terms agreed to by the city and petitioner in accordance with BMC 13.50.140.

C. Within fifteen working days of the city council's decision, the Planning Department director shall mail a copy of the decision to the petitioner.

13.50.160 Appraisals and appraisal fees.

A. Appraisal of Subject Right-of-Way. As a condition precedent to the city council's consideration of a resolution setting a date for a public hearing on the question of whether the subject right-of-way should be vacated, the petitioner shall pay for the cost of preparation of an appraisal of the area proposed to be vacated, and the city shall select an appraiser and order such appraisal. An appraisal, and payment may not be required when, in the judgment of the Planning Department director, it is not needed to determine the fair market value of the area to be vacated.

B. Payment for Vacation. In no event shall a vacation request come before the hearing examiner for the public hearing until the appraised value of the subject right-of-way has been computed, incorporated into the ordinance, and deposited with the finance director. The amount deposited with the finance director may be adjusted by the Planning Department director if the petitioner and city staff have tentatively agreed to a lesser deposit amount or no deposit at all based on the value of the public amenity provided by the petitioner as part of the proposed vacation.

C. Return of Deposit. In the event city council does not approve the vacation, the deposited amount (exclusive of the application, public hearing, and appraisal fees) shall be refunded to the petitioner.

13.50.170 Title to vacated street or alley.

Title to the subject right-of-way shall pass in accordance with Washington State statutory and common law governing title to vacated rights-of-way.

13.50.180 Vested rights not affected.

No vested rights shall be affected by the provisions of this chapter.

13.50.190 City use of revenue.

One-half of the revenue received by the city as compensation for the subject right-of-way must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city.

Section 3: BMC 1.26.050 is amended to reflect that the decision on a street vacation petition is a legislative determination by city council at a closed record hearing based on the record created by the hearing examiner at a public hearing including the hearing examiner's findings of fact, conclusions of law, and recommendation:

1.26.050 Rules of procedure and decisions for matters before city council decisions based on a recommendation of the hearing examiner as provided by BMC 2.56.050 (C) and (D) or planning commission as provided by BMC 21.10.040 (G) and 21.10.140(A) other determination of city council.

The rules of procedure and decision for quasi-judicial and legislative matters ~~open record~~ hearings before city council based on a recommendation of the hearing examiner as provided by BMC 2.56.050(C) and (D) or the planning commission as provided by BMC 21.10.040 (G) and 21.10.140 (A) ~~other ordinance~~ shall be as follows:

A. Quasi-judicial and legislative decisions of the city council shall be based upon the record established ~~in~~ at a public hearing before the hearing examiner or planning commission's ~~proceedings, including the hearing examiner or planning commission's written findings of fact, conclusions of law, and recommendation. or proceedings before another recommending body or department, oral and written testimony, evidence, and written argument submitted by the parties of record, and such oral argument as may be allowed at the discretion of the city council.~~

B. City council shall consider the matter at a closed record hearing. Legal argument may be presented based on the record established in the hearing examiner or planning commission's proceedings; however, no new evidence shall be presented or considered.


CB. Discretion of CA ~~At the conclusion of the closed record hearing, city council may:-~~

1. ~~With regard to the matters described in BMC 2.56.050(C) and (D), city council~~ may Accept the recommendation of the hearing examiner or planning commission or reject the same in whole or in part. If council rejects the recommendation in whole or in part, then it shall make findings and conclusions explaining its decision; or

2. ~~For other quasi-judicial matters in which no recommendation of a director, commission, or board is part of the record, the city council shall make findings of fact and conclusions of law and shall issue its decision consistent with the same. Remand the matter to the hearing examiner or planning commission with instructions for further proceedings.~~

DG. The decision of the city council shall be final for the purposes of judicial appeal as provided by the laws of the state of Washington.

PASSED by the Council this 25th day of September, 2023.

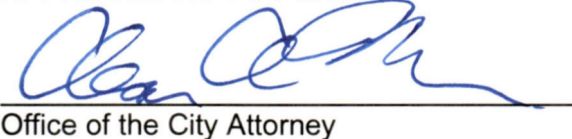

Council President

APPROVED by me this 11 day of October, 2023.


Mayor

ATTEST: 
Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published:

September 29, 2023

Ordinance (12)

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270



Beaufort Gazette
Belleville News-Democrat
Bellingham Herald
Bradenton Herald
Centre Daily Times
Charlotte Observer
Columbus Ledger-Enquirer
Fresno Bee

The Herald - Rock Hill
Herald Sun - Durham
Idaho Statesman
Island Packet
Kansas City Star
Lexington Herald-Leader
Merced Sun-Star
Miami Herald

el Nuevo Herald - Miami
Modesto Bee
Raleigh News & Observer
The Olympian
Sacramento Bee
Fort Worth Star-Telegram
The State - Columbia
Sun Herald - Biloxi

Sun News - Myrtle Beach
The News Tribune Tacoma
The Telegraph - Macon
San Luis Obispo Tribune
Tri-City Herald
Wichita Eagle

AFFIDAVIT OF PUBLICATION

Account #	Order Number	Identification	Order PO	Amount	Cols	Depth
13947	472341	Print Legal Ad-IPL01414820 - IPL0141482		\$131.25	1	34 L

Attention: E-Tearsheet

CITY OF BELLINGHAM FINANCE DEPT
210 LOTTIE ST
BELLINGHAM, WA 982254009

kngoetz@cob.org

City of Bellingham Ord. #2023-09-026

An Ordinance Amending the Cornwall Park Neighborhood Area 7 Institutional Master Plan.

City of Bellingham Ord. #2023-09-027

An Ordinance Amending the 2023-2024 Biennial Budget - Amendment No. 8.

City of Bellingham Ord. #2023-09-028

An Ordinance Adopting State Firearm Regulations by Reference, Prohibiting the Possession of Firearms at City Operated Stadiums and Convention Centers, and Prohibiting the Possession of Firearms at City Hall.

City of Bellingham Ord. #2023-09-029

An Ordinance Repealing the City's Street Vacation Policies and Procedures in BMC Chapter 13.48, Adopting New City Street Vacation Policies and Procedures in BMC Chapter 13.50, and Amending BMC 1.26.050 to Reflect that the City Council's Decision on a Street Vacation is a Legislative Matter.
IPL0141482
Sep 29 2023

Stefani Beard, being duly sworn, deposes and says: That he/she is the Principal Clerk of The Bellingham Herald, a daily newspaper printed and published in Bellingham, Whatcom County, State of Washington, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of six months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Bellingham Herald, as amended, for:

1 insertion(s) published on:

09/29/23

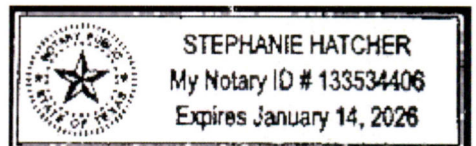
Stefani Beard

(Principal Clerk)

Subscribed and sworn on this 29th day of September in the year of 2023 before me, a Notary Public, personally appeared before me Stefani Beard known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she executed the same.

Stephanie Hatcher

Notary Public in and for the state of Texas, residing in Dallas County



Extra charge for lost or duplicate affidavits.
Legal document please do not destroy!