

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No.648 Assigning Open Record Hearings for Street Vacations to the Hearing Examiner
DEPARTMENT:	City Attorney's Office;
PRESENTED BY:	Ian Sievers, City Attorney
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion

PROBLEM/ISSUE STATEMENT: The Washington court has determined that street vacations have a quasi-judicial element. Individual abutting property owners and other properties specially benefited by access from a particular road have standing to assert procedural rights to consideration of a vacation petition or to oppose a street vacation. The decision, however, is within the legislative discretion of the Council in deciding whether the vacation is in the public interest. For example street vacations are not appealable as a land use permit decision under the Land Use Petition Act (LUPA). They are also categorically exempt from SEPA.

In 2003 street vacations were removed from the development code (Shoreline Municipal Code (SMC) Chapter 20) to SMC Chapter 12 to reflect that vacations are not a regulation of private property development, but analogous to the surplus of city properties. Street vacations are still listed as a Type C quasi-judicial decision in the development code because these due process procedures are adopted in SMC Chapter 12.17 to protect quasi-judicial rights of those private property owners that are impacted differently than the general public.

In 2011 the City considered and approved (Ordinance No. 621) a transfer of all quasi-judicial open record hearings from the planning commission to the hearing examiner, making amendments to Table 20.30.060 to reflect this change in review authority, including the review authority for street vacations. Unfortunately, the incorporation of the planning commission hearings in Chapter 12.17 was not changed in the 2011 ordinance along with amendments to the development code procedures. Ordinance No. 648 is proposed to correct this omission.

This conflict was discovered in processing the recent Wagner street vacation petition, the first street vacation petition received since the transfer of quasi-judicial hearings. The hearing and recommendation for this petition was assigned to the hearing examiner under rules of statutory construction giving precedence to the most recently enacted of two conflicting ordinances.

FINANCIAL IMPACT: None. Currently hearings are conducted by the hearing examiner as explained above. The minimal increase in processing costs for hearings

before the contracted hearing examiner rather than the volunteer planning commission were considered with the passage of Ordinance No. 621.

RECOMMENDATION

Staff recommends that Council approve Ordinance No. 648 assigning street vacation open record hearings to the hearing examiner.

Approved By: City Manager ***JU*** City Attorney ***IS***

ATTACHMENT A: Ordinance No. 648

ORDINANCE NO. 648

AN ORDINANCE OF THE CITY OF SHORELINE AMENDING THE PROCEDURES FOR STREET VACATION; AND AMENDING SHORELINE MUNICIPAL CODE CHAPTER 12.17

WHEREAS, a public participation process was conducted to develop and review amendments to the Development Code to transfer review authority for quasi-judicial hearings from the Planning Commission to the Hearing Examiner, including the open record hearing required for street vacations by state law; and

WHEREAS, the City Council approved transfer of street vacation open record hearing from the Planning Commission to the Hearing Examiner with amendments to SMC Table 20.30.060 in the Development Code approved in Ordinance No. 621 passed November 28, 2011; and

WHEREAS, Chapter 12.17 *Street Vacation* adopted in 2003 as part of Title 12 *Streets, Sidewalks, and Public Places*, establishes procedures and criteria for street vacations but was not updated to replace the Planning Commission with the Hearing Examiner as the review authority when this change was made in the Development Code; now therefore

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment. Shoreline Municipal Code sections 12.17.020, .040 and .050 are amended to read as follows:

.020 Petition method-Procedure.

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B. After verification of the petition by city staff, the city council by resolution shall fix a time when the petition will be heard by the ~~planning commission~~ hearing examiner not more than 60 days nor less than 20 days after the date of the passage of such resolution.

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D. The ~~planning commission~~ hearing examiner shall conduct an open record hearing to determine whether the ~~commission~~ hearing examiner will recommend approval of the petition to the city council based on criteria of this chapter and planning and engineering staff recommendations.

E. After the ~~planning commission~~ hearing examiner has issued ~~their~~ his or her recommendation the petitioner shall pay the actual cost for preparation of the appraisal report to determine the fair market value of the subject property together with a deposit to cover anticipated closing costs required by the vacation as recommend by the ~~planning commission~~ hearing examiner.

...

.040 Resolution method- Procedure.

A. The city council may propose a vacation by resolution of intent to vacate in lieu of a petition from abutting property owners. The resolution shall set a hearing before the ~~planning commission~~ hearing examiner within the timeframes of SMC 12.17.202(B).

B. A notice of hearing shall be posted and mailed as required by SMC 12.17.020(C), except the notice shall state the vacation was initiated by the city council and further state that if 50 percent of the abutting property owners file written objection to the proposed vacation with the city clerk prior to the ~~planning commission~~ hearing examiner hearing, the vacation proceeding will terminate.

C. If sufficient objections to the vacation are not filed, the ~~planning commission~~ hearing examiner shall hold an open record hearing, and make a recommendation to the council based on the vacation criteria of this chapter and recommendations of planning and engineering staff.

D. The city council shall hold a closed record hearing to consider the hearing record and recommendation of the ~~planning commission~~ hearing examiner.

.050 Hearing criteria.

The ~~planning commission~~ hearing examiner and city council shall find each of the following criteria is satisfied in making their recommendation and decision.

A. The vacation will benefit the public interest;

B. The proposed vacation will not be detrimental to traffic circulation, access, emergency services, utility facilities, or other similar right-of-way purposes;

C. The street or alley is not a necessary part of a long range circulation plan or pedestrian/bicycle plan; and

D. The subject vacation is consistent with the adopted comprehensive plan and adopted street standards.

Section 2. Effective Date. This ordinance shall take effect and be in full force five days from publication of a summary of this ordinance consisting of its title in the official newspaper of the City.

PASSED BY THE CITY COUNCIL ON OCTOBER 22, 2012.

Mayor Keith A. McGlashan

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of publication: , 2012

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