

**CITY COUNCIL AGENDA ITEM**  
CITY OF SHORELINE, WASHINGTON

<b>AGENDA TITLE:</b>	Discussion of Ordinance No. 821 – Amending Chapter 12.17 of the Shoreline Municipal Code in Regards to City Council Action on Street Vacations		
<b>DEPARTMENT:</b>	City Attorney's Office		
<b>PRESENTED BY:</b>	Margaret King		
<b>ACTION:</b>	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

**PROBLEM/ISSUE STATEMENT:**

Chapter 12.17 of the Shoreline Municipal Code (SMC) supplements chapter 35.79 RCW and sets forth the City's procedures for the vacation of city right-of-ways (streets). SMC 12.17.020 states that after the Hearing Examiner holds an *open record hearing*, the City Council will hold a *closed record hearing* to decide if the vacation should be granted. The use of the term *closed record hearing* gives the impression that the City Council is acting in a quasi-judicial manner. However, the long-standing decisions of the Washington Courts is that the vacation of a street is a legislative function, not a quasi-judicial one.

To clarify that the Council's decision is not a quasi-judicial one but instead a legislative decision and to ensure full public participation in that legislative process at all levels prior to the City Council's decision, the City Attorney's Office is recommending that SMC 12.17.020 be amended to delete the reference to a *closed record hearing*. This removes any potential confusion and makes it clear that it is a legislative function the Council is performing and provides clarity as to the Council's decision authority. Proposed Ordinance No. 821 (Attachment A) provides for such an amendment. Tonight, Council is scheduled to discuss this proposed ordinance. Proposed Ordinance No. 821 is scheduled to be brought back to Council for adoption on May 14, 2018.

**RESOURCE/FINANCIAL IMPACT:**

There is no financial impact anticipated for the adoption of this amendment.

**RECOMMENDATION**

This item is for discussion purposes only. The City Attorney's Office is seeking any guidance from the City Council related to these amendments. Proposed Ordinance No. 821 is scheduled to return to Council for adoption on May 14, 2018.

Approved By:            City Manager **DT**    City Attorney **MK**

## **BACKGROUND**

Adopted in 2003, chapter 12.17 SMC supplements chapter 35.79 RCW and sets forth the City's procedures for the vacation of city right-of-ways (streets). RCW 35.79.030 provides that a hearing must be conducted on a petition to vacate a public street and authorizes the use of a hearing examiner to perform the public hearing. This RCW further states that if a public hearing was held before a hearing examiner, it is not necessary to hold another hearing on the petition before the City Council.

SMC 12.17.020 states that after the hearing examiner holds an *open record hearing* there is to be another hearing before the City Council, this time a *closed record hearing* to decide if the vacation should be granted. The use of the term *closed record hearing* gives the impression that the City Council is acting in a quasi-judicial manner which would preclude it from taking additional comments from the public (written or oral) or evidence on the matter before making its decision.

The *closed record hearing* before the City Council contained in SMC 12.17.020 was recently highlighted after a recent public hearing on a street vacation before the hearing examiner. At that time, there was public confusion on whether the public could still present additional comment to the City Council. In addition, given the use of the phrase "*closed record hearing*", the City Council themselves could become confused on what is permitted when dealing with a street vacation.

As the City Council has been previously advised by the City Attorney's Office, the long-standing rule in Washington Courts is that the vacation of a street is a legislative function. See, *Coalition of Chiliwist v. Okanogan County (2017)* (reiterating that road vacation is a political/legislative function that belongs to municipal authorities and not a quasi-judicial function). While the RCW allows the City Council to delegate the public hearing itself to a Hearing Examiner, when performing a legislative function, the City Council should also entertain and evaluate the comments and evidence submitted by citizens. By having all comments and evidence on the matter, up and until the adoption of the vacation ordinance, assures that the City Council will be fully informed when weighing the public benefit/use that will result from the vacation of a city right-of-way. See, *London v. City of Seattle (1980)* (holding that for a street vacation the legislative body is the proper entity to weigh public benefit).

## **DISCUSSION**

To ensure full public participation at all levels prior to the City Council's decision on a street vacation, the City Attorney's Office is recommending that SMC 12.17.020 be amended to delete the reference to a *closed record hearing* so as to clearly reflect the legislative function the Council is performing. The City Attorney's Office is also recommending some nominal amendments to this provision in order to provide clarity as to the Council's decision authority.

Specifically, the proposed amendment to SMC 12.17.020(F) is as follows:

F. The city council may adopt, reject, or modify the recommendation of the hearing examiner. If the city council determines to grant the petition or any part thereof, the petition is approved by the city council following a closed record hearing and a vacation ordinance is shall be adopted. The effective date and recording of a certified copy of the ordinance with the King County Recorder's Office records division shall be conditioned on the payment of compensation and expenses under this chapter and recording of utility or other public easements necessary to satisfy vacation criteria.

Proposed Ordinance No. 821 (Attachment A) would provide for this amendment. Tonight, Council is scheduled to discuss this proposed ordinance. Proposed Ordinance No. 821 is scheduled to be brought back to Council for adoption on May 14, 2018.

### **RESOURCE/FINANCIAL IMPACT**

There is no financial impact anticipated for the adoption of this amendment.

### **RECOMMENDATION**

This item is for discussion purposes only. The City Attorney's Office is seeking any guidance from the City Council related to these proposed amendments. Proposed Ordinance No. 821 is scheduled to return to Council for adoption on May 14, 2018.

### **ATTACHMENTS**

Attachment A – Proposed Ordinance No. 821

**ORDINANCE NO. 821**

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON  
AMENDING CHAPTER 12.17 STREET VACATION OF THE SHORELINE  
MUNICIPAL CODE IN REGARDS TO THE CITY COUNCIL ACTION ON  
STREET VACATIONS.**

WHEREAS, the City of Shoreline is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington, and planning pursuant to the Growth Management Act, Chapter 36.70A RCW; and

WHEREAS, chapter 35.79 RCW authorizes the City to vacate streets and the City has adopted SMC Chapter 12.17 to provide procedures and criteria supplementing this authorization; and

WHEREAS, the long standing rule in Washington is that street vacations are a legislative function of the City Council as opposed to a quasi-judicial function; and

WHEREAS, SMC 12.17.020(D) provides for an “open record hearing” before the City Hearing Examiner and SMC 12.17.020(F) states that the City Council is to hold a “closed record hearing” on a petition for a street vacation; and

WHEREAS, the use of the phrase “closed record hearing” purports to limit the ability of the public to address the vacation issue to the City Council in what is otherwise a legislative function of the City Council and may also deprive the City Council of invaluable information for weighing the public benefit of a vacation; and

WHEREAS, the City desires to provide for full public participation when determining whether it is within the public interest to vacate a street and to provide clarity as to the procedures for street vacations when before the City Council;

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

**Section 1. Amendment to Shoreline Municipal Code Section 12.17.020.** Section SMC 12.17.040 is amended as follows:

**12.17.020 Petition method – Procedure.**

A. The owners of two-thirds interest in any real estate abutting any city right-of-way, or any part thereof, may file a petition with the city clerk giving a description of the property to be vacated, together with a nonrefundable street vacation fee established by the council. Petitions shall comply with petition requirements of RCW 35A.01.040.

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 hearing examiner not more than 60 days nor less than 20 days after the date of the passage of such resolution.

C. The city shall post a public notice at least 20 calendar days before the hearing in three conspicuous public places and in a conspicuous place on the street or alley sought to be vacated. Copies of the notice shall be mailed to each owner of property within 500 feet of the proposed vacation area at least 15 days before the hearing. The notice shall include:

1. A statement that a petition has been filed to vacate the street or alley;
2. The description of street or alley to be vacated; and
3. The time and place of the hearing of the petition.

D. The hearing examiner shall conduct an open record hearing to determine whether the 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 hearing examiner has issued 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 recommended by the hearing examiner.

F. The city council may adopt, reject, or modify the recommendation of the hearing examiner. If the city council determines to grant the petition or any part thereof, the petition is approved by the city council following a closed record hearing and a vacation ordinance is shall be adopted. The effective date and recording of a certified copy of the ordinance with the King County Recorder's Office records division shall be conditioned on the payment of compensation and expenses under this chapter and recording of utility or other public easements necessary to satisfy vacation criteria.

**Section 2. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

**Section 3. Severability.** Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

**Section 4. Publication and Effective Date.** A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect five days after publication.

**PASSED BY THE CITY COUNCIL ON MAY 14, 2018**

\_\_\_\_\_  
Mayor Will Hall

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Jessica Simulcik-Smith  
City Clerk

\_\_\_\_\_  
Margaret King  
City Attorney

Date of Publication: , 2018  
Effective Date: , 2018