

# TIGARD MUNICIPAL CODE

## Chapter 15.08 STREET VACATIONS.

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### 15.08.010 Purpose.

The purpose of this chapter is to establish procedures for the vacation of a street, way, alley, plat, public square or other public places. (Ord. 85-01 §1(Exhibit A(part)), 1985).

### 15.08.020 Scope--Statutory Procedures Applicable.

(a) This chapter shall apply to the vacation of all or part of any street, avenue, boulevard, alley, plat, public square or other public place. (Ord. 85-01 §1(Exhibit A (part)), 1985).

### 15.08.030 Action--Recordation--Effective Date.

(a) A vacation shall be by ordinance by the Council.

(b) No vacation shall be effective until the ordinance vacating the property is recorded by the Recorder with the County Clerk, assessor and surveyor.

(c) No vacation shall be recorded until:

(1) All fees have been paid as provided by Section 15.08.160 of this chapter;

(2) All required legal instruments have been signed and the Recorder finds that all required signatures have been placed on the documents; and

(3) The petitioners have complied with all of the applicable conditions of approval except as provided by Section 15.08.140(c) of this chapter. (Ord. 85-01 §1(Exhibit A(part)), 1985).

### 15.08.040 Process--Consent On City Property.

(a) A vacation may be initiated in two

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ways:

(1) Any interested person(s) may file a petition requesting a vacation in the manner provided by this chapter; or

(2) The Council may make a vacation without a petition or consent from the affected property owners provided:

(A) Notice is given as provided by section 15.08.120 of this chapter;

(B) The owners of the majority of the area affected computed on the basis of ORS 271.080 have not objected in writing; and

(C) All abutting property owners have consented to the vacation except the City may proceed with the vacation without the consent of the owners provided the City pays damages in situations where the vacation substantially affects the market value of the property.

(b) In the event that City owned property abuts an area proposed for vacation, the City Manager shall have the authority to give consent or withhold consent for purposes of initiating the petition. (Ord. 03-08, 00Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.050 Prepetition Conference Required--Request For Petition Form.**

(a) Persons interested in submitting a vacation petition shall make application to the City Recorder for a prepetition conference and shall meet with the Recorder, Planning Director and Public Works Director in a prepetition conference.

(b) The prepetition conference shall be for the purpose of:

(1) Determining the specific area to be vacated;

(2) Explaining the procedures for a vacation;

(3) Explaining the approval criteria;

(4) Explaining the costs associated with a vacation; and

(5) Advising on the feasibility of the proposal. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.060 Notice Of Intent To File Vacation Petition--Notice To Interested Parties.**

(a) Following the prepetition conference and determination of the area to be vacated, the interested person or persons shall file a notice of intent to file a vacation petition with the Recorder.

(b) The notice of intent shall be accompanied by a fee deposit as provided by Section 15.08.160 of this chapter, and it shall be accompanied by a copy of the assessor's map showing the area to be vacated.

(c) The Recorder shall give the notice of intent to vacate to all utility providers, the county, and other interested parties of the intent to file a vacation petition and shall request all utility providers and interested persons to provide a written response within thirty days regarding any interest they have in the area to be vacated which must be protected and the means by which it should be protected. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.070 Vacation Petition, Boundaries And Required Legal Documents.**

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(a) At such time as each utility provider and interested party has responded to the notice of intent, the City Recorder shall request the Public Works Director to:

(1) Identify on a county tax map the specific area to be vacated and the real property affected by the proposed vacation as provided by ORS 271.080(2);

(2) Identify all legal documents which shall be required as a condition of granting the vacation such as utility and access easements;

(3) Provide an estimate of costs as provided by Section 15.08.160 of this chapter;

(4) Provide a legal description for the area to be vacated unless the Director of Public Works finds it should be done by other than City personnel;

(5) Any conditions of approval which would be attached to the vacation known at this point in the process; and

(6) Provide information as to where to locate a list of the names of owners and persons having an interest in the real property which will be affected by the vacation as provided by ORS 271.080 (2).

(b) The Recorder shall mail the petition form, and information compiled by the Director of Public Works, as a part of Section 15.08.070 (A) of this chapter to the interested person identified at the prepetition conference to coordinate the vacation process. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.080      Petition Requirements--Staff Review.**

(a) The application shall be presented to the Recorder who shall not accept incomplete

applications.

(b) A complete application shall include:

(1) A completed petition consenting to the vacation which is signed by all abutting property owners and the property owners of not less than two-thirds of the property affected as provided by ORS 271.080 (2);

(2) A fee deposit as required by Section 15.08.160 of this chapter;

(3) Each legal instrument required by the Director of Public Works which is signed by all required persons; and

(4) A certificate showing that all City liens and all taxes have been paid on the land covered by the petition in the case of a vacation of a plat or a portion thereof;

(5) A report from a title company indicating the name and address of all persons holding an interest in the abutting property and affected property.

(c) The petition shall:

(1) Set forth a description of the ground proposed to be vacated;

(2) State the purpose for which the ground is proposed to be used;

(3) State the reason for the vacation; and

(4) Contain the notarized signatures required by ORS 271.080 (2). (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.090      Required Reports.**

(a) Planning Director's Report.

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(1) The Planning Director shall prepare a report which includes a recommendation to approve, approve with conditions or deny the petition which shall be submitted to the Planning Commission as provided by Section 15.08.100 of this chapter for a recommendation by the Planning Commission.

(2) The recommendation shall be based on findings of compliance or noncompliance with the comprehensive plan.

(3) The recommended conditions of approval, if any, shall be those conditions necessary to carry out the comprehensive plan.

**(b) Public Works Director Report.**

(1) The Public Works Director shall prepare a report which includes a recommendation to approve, approve with conditions or deny the petition which shall be submitted to the Council as provided by Section 15.08.130 of this chapter.

(2) The recommendation shall be based on findings of:

**(A) The effect on:**

(i) Traffic, pedestrian and bicycle circulation;

(ii) The provision of fire and police service as related to increasing response time;

(iii) Drainage;

(iv) The provision of utilities;

**(B) Compliance with the comprehensive plan, transportation element;**

**(C) Compliance with the capital improvements program.**

(3) The recommended conditions of approval, if any, shall be those conditions necessary to protect the public interest. (Ord. 85-01 §1(Exhibit A(part)), 1985).

**15.08.100 Planning Commission Review.**

(a) The Planning Director shall submit the report prepared under Section 15.08.090 (a) of this chapter for review and a recommendation by the Planning Commission to the Council.

(b) No public hearing shall be required and the Commission shall act by resolution.

(c) The recommendation by the Planning Commission shall be based on findings of compliance or noncompliance with the comprehensive plan and shall be for approval, approval with conditions or denial.

(d) The Planning Commission recommendation and conditions, if any, shall be submitted to the Council by the Planning Director as part of the public hearing record as provided by Section 15.08.130 (b) of this chapter. (Ord. 85-01 §1(Exhibit A(part)), 1985).

**15.08.110 Council Sets Hearing Date-- Concurrent Hearings.**

(a) Within thirty days of receipt of the completed petition, the Recorder shall place on the Council's agenda a request for the Council to set a public hearing date on the petition. The recorded shall give notice to at least one of the petitioners of the meeting at which the Council will consider setting the hearing date.

(b) The Council may deny the petition after notice to the petitioners of each proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the Council shall fix a time for a formal hearing upon the petition.

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(c) Two or more streets, alleys, avenues, boulevards or parts thereof, may be joined in one proceeding provided they intersect or adjoin to each other. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.120 Notice.**

(a) Notice of the public hearing shall be given as follows:

(1) The Recorder shall give notice of the petition and hearing by publishing a notice in the City official newspaper once each week for two consecutive weeks prior to the hearing.

(2) The Recorder shall cause notice to be posted at or near each end of the proposed vacation and in at least two conspicuous places in the proposed vacation areas within five days after the first day of publication.

(b) The posting and first day of publication of the notice shall not be less than fourteen days before the hearing.

(c) The notice shall contain the following:

(1) A heading entitled "Notice of Vacation," and the blank shall indicate what is proposed to be vacated;

(2) A description of the area to be vacated by the petition;

(3) The date the petition was filed;

(4) The name of at least one petitioner;

(5) The date by which any objection or remonstrance shall be filed in writing with the Recorder. (Ord. 92-05 §1(Exhibit A), 1992; Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.130 Council Action--Approval Standards--Conditions Payment Of Taxes.**

(a) The Council shall hold the public hearing and it shall approve, approve with conditions or deny the petition in whole or in part by ordinance based on findings that:

(1) The consent of the owners of the requisite area have been obtained or the provisions of Section 15.08.040 (2) of this chapter have been satisfied;

(2) Proper notice has been given as required by Section 15.08.120 of this chapter;

(3) The public interest will not be prejudiced by the vacation; and

(4) A certificate showing that all City liens and all taxes have been paid on the land covered by the petition has been filed with the Recorder in the case of a vacation of a plat or a portion thereof.

(b) The Council findings shall be based on:

(1) The petition;

(2) The public testimony;

(3) The recommendation of the Planning Commission;

(4) The report of the Public Works Director;

(5) The letters submitted by utility providers and interested parties; and

(6) A report by the City Engineer regarding the payment of taxes, liens, and fees.

(c) The conditions of approval may pertain

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to:

(1) The maintenance and use of underground public utilities or service facilities in the vacated portion;

(2) Limitations on the use of the area above and adjacent to underground utilities or service facilities;

(3) Moving at petitioner's expense the utilities or services either below, on, or above the surface;

(4) Construction, extension or relocation of sidewalks and curbs;

(5) Grading or pavement extensions;

(6) Dedication for street use of other area in lieu of the area to be vacated;

(7) The posting of a performance bond to assure that all work shall be completed; and

(8) Any other matter relating to the vacation which is necessary to protect the public or adjoining property owners or to carry out the comprehensive plan. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.140 Acceptance Of Conditions Required--Satisfaction Of Conditions Required--Exception.**

(a) Acceptance of Conditions Required.

(1) The petitioners shall file with the Recorder a document which has been approved by the City Attorney which accepts the terms and conditions of the approval except it shall not be required in the event that the conditions have been satisfied by the conclusion of the hearing.

(b) Satisfaction of Conditions Required.

(1) All conditions of approval shall be satisfied prior to the recording of the ordinance approving a petition for a vacation unless an exception is granted by the Council under the provisions of Section 15.08.140 of this chapter.

(c) Exception.

(1) The Council may grant an exception to the requirement that all conditions of approval be satisfied prior to the recording of the ordinance if it finds that the vacation petition involves one property owner and upon the conditions that:

(A) The petitioner posts a performance bond in the amount of the project cost as estimated by the Public Works Director;

(B) It is agreed in writing that the work will be completed within one year;

(C) The petitioner grants to the City a right of access to the property a right to complete the improvement in the form of covenants which are recorded with the county.

(2) The petitioner shall make a formal request to the Recorder for an exception. The Recorder shall advise the Council at the public hearing of the request, and the Council shall act upon the request as a part of the approval process. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.150 Payment Of Taxes And City Liens.**

No ordinance for the vacation of all or part of a plat shall be passed by the Council until the petitioner has filed with the Recorder a certificate showing that all City liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated. (Ord. 85-01 §1(Exhibit A(part)), 1985).

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## **15.08.160 Fees--Recording Costs And Maintenance Of Records.**

(a) The petitioners shall be responsible for all costs associated with the vacation. The costs shall include advertising costs, legal fees, employee total compensation costs, processing costs, and costs of recording and preparation of the certified ordinance and map. No application shall be accepted unless it is accompanied by a signed fee agreement.

(b) The notice of intent to vacate shall be accompanied by a deposit as required by the adopted fee schedule to cover the cost of giving notice as required by Section 15.08.060 (D) and of this chapter and the preparation of the information required by Section 15.08.070 of this chapter. The City shall not accept a petition to vacate until all costs incurred by the City at this stage of the process are paid.

(c) The petition shall be accompanied by a deposit in the amount estimated by the Director of Public Works to cover all subsequent costs for work required by this chapter. In no case shall the deposit required be less than the amount required by the adopted fee schedule.

(d) The City shall maintain an accounting of the actual costs and each petition shall be accompanied by a time recording sheet and:

(1) Each employee engaged in work on the petition shall record their time on the time sheet and shall record the activity on which the time was spent;

(2) The Recorder shall maintain a record of all expenses associated with the petition.

(e) Copies of all records shall be available for inspection.

(f) All costs shall be paid prior to the recording of the ordinance and any excess funds shall be refunded to petitioners as provided by the deposit agreement. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.170 Recordation Of Ordinance-- Title To Vacated Area.**

(a) Recordation of Ordinance.

(1) The vacation shall become effective upon the recordation of a certified copy of the ordinance by the City Recorder, a petitioner, or designated representative with the County Clerk, county assessor and county surveyor.

(b) Title to Vacated Areas.

(1) The title to a street or other public area except a public square shall attach to the lands bordering on such area in equal portions except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of the boundary line shall attach to the abutting property on such side.

(2) In the event a public square is vacated, the title thereto shall vest in the City. (Ord. 85-01 §1(Exhibit A(part)), 1985).

## **15.08.180 Vacation For Purpose Of Rededication.**

No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or any street in lieu of the original unless the provisions of ORS 271.160 are satisfied. (Ord. 85-01 §1(Exhibit A(part)), 1985).■