

GENERAL ORDINANCE NO. 99-1230

AN ORDINANCE PROVIDING PROCEDURES FOR THE VACATION OF
PUBLIC RIGHTS-OF-WAY WITHIN THE CITY OF THE DALLES

THE COUNCIL OF THE CITY OF THE DALLES ORDAINS AS FOLLOWS:

Section 1. Petition for Vacation. Whenever any person interested in any real property within The Dalles desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, that person may file a petition requesting a vacation setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used, and the reason for the vacation.

Section 2. Contents of Petition. Attached to the petition shall be the consent of the owners of all abutting property and the consent of the owners of not less than two-thirds in area of the real property affected by the proposed vacation. Real property affected constitutes land lying on either side of the street proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. The signature of each property owner executing a consent form must be acknowledged before a notary public.

Section 3. Filing of Petition; Determination of Sufficiency. The petition along with the required consent forms shall be submitted to the Community Development Department for verification of the petition requirements. The Community Development Department shall schedule a meeting of the Site Review Team to review the proposed vacation. Upon receipt of verification that the petition is sufficient, and the reports and recommendations of the Site Review Team, the City Clerk shall file the petitions for vacation and forward the petition, reports and recommendations to the City Council for preliminary consideration pursuant to Section 4 of this ordinance. The City Clerk shall notify at least one of the petitioners when the petition will be presented to the City Council.

Section 4. Initial Action by City Council. The City Council may deny the petition after notice to the petitioners of such proposed action; however, if there appears to be no reason why the petition should not be allowed in whole or in part, the City Council shall schedule a time for a formal hearing on the petition.

Section 5. Notice of Hearing; Fee Required. The City Clerk shall give notice of the hearing as provided by ORS 271.110(1). Notice of the proposed vacation shall be posted at or near each end of the proposed vacation as set forth in ORS 271.110(2). Before publishing notice of the hearing, the petitioners shall deposit a sum with the City Clerk, as prescribed by the City Council by resolution, sufficient to cover the cost of publication, posting, and other anticipated

expenses, including the costs of City staff time incurred in reviewing and processing the requested vacation. In case the actual costs of the vacation proceeding exceeds the amount of the deposit, an additional sum sufficient to cover the deficiency, shall be collected by the City Clerk before the vacation is completed. In case the actual costs are less than the amount deposited, any excess amount shall be refunded to the petitioners.

Section 6. Vacation on Council's Own Motion. The City Council may initiate a vacation proceeding upon its own motion, and may make such vacation without a petition or consent of property owners. Upon adoption of a motion initiating a vacation proceeding, the proposed vacation shall be referred to the City's Site Team Review for a recommendation to be presented to the Council at the public hearing. Notice of the hearing shall be given as provided for in ORS 271.110(1) and (2). No public way shall be vacated by a proceeding initiated by the City Council under either of the following circumstances: (1) if the owners of a majority of the affected properties (as defined in Section 2) object in writing to the vacation; or (2) if vacating the public way would substantially diminish the market value of the abutting properties, unless the City Council provides for paying damages.

Section 7. Hearing and Decision. The City Council shall hold a public hearing on the date set and shall take testimony and receive written objections and other evidence. The Council shall review the staff's recommendation, and may continue the hearing for further testimony or deliberation if necessary. After closing the hearing, the City Council shall approve, conditionally approve, modify or deny a proposed vacation. No public way may be vacated unless and until the City Council has adopted findings which substantiate all of the following:

- (A) If the vacation proceedings were initiated by a petition, consent of all abutting property owners and at least two-thirds of affected property owners has been obtained; if the vacation proceedings were initiated by motion of the City Council, a finding that owners of a majority of the area affected by the vacation have not objected in writing prior to the hearing;
- (2) Notice has been duly given;
- (3) The proposed vacation does not conflict with the City's Comprehensive Plan or any other City ordinances;
- (4) The public interest will not be prejudiced by the vacation of the public way;
- (5) If the vacation proceedings were initiated by motion of the City Council, a finding either that all abutting property owners have consented to the vacation, or that if the evidence shows the vacation will substantially diminish the market value of the abutting owner's property, the City Council has made provision for paying damages.

Section 8. Conditions. The City Council may impose any of the following conditions upon the requested vacation:

- (1) An easement be retained by the City for physical access, utilities, or other public facility, along with restrictions on the use of the area adjacent to that facility;
- (2) The removal or construction of a public utility or other public service facility. The City Council shall have the right to require the petitioner to post a surety bond or deposit, in an amount and form approved by the City Attorney, and establish a deadline for the removal or construction of the utility or facility, to ensure compliance with the condition;
- (3) Replatting or rededication of all or part of the public way to be dedicated; or
- (4) Improvement of a street or alley prior to rededication, which may include the posting of a surety bond or deposit and the establishment of a deadline for completion of the improvement in the same manner as subsection (B).

Section 9. Ordinance Approving Vacation. Upon approval of a proposed vacation of a public way and the fulfillment of any required conditions, the City Council shall enact a non-emergency ordinance which declares the public way vacated, and which specifies the conditions upon which the vacation has been made. No ordinance shall be passed by the City Council until the City Clerk has filed in the Clerk's office a certificate showing that all City liens and all taxes have been paid on the lands covered by the proposed vacation. A certified copy of the ordinance shall be filed with the County Clerk, the County Assessor and the County Surveyor. The cost of preparing, filing, and recording the ordinance and any map required to be filed with the ordinance shall be paid for by the petitioner.

Section 10. Appeal. Appeals shall be filed in accordance with the provisions of ORS 271.130(4).

Section 11. Consent to Vacation for City as Owner. When City-owned property abuts the area of a street or plat sought to be vacated by a petition, or is located within an "affected area", the City Manager may sign a consent to the vacation as an owner for the purpose of City Council jurisdiction and consideration.

Passed by the Council and approved by the Mayor this 22nd day of February, 1999.