

VACATION OF PUBLIC RIGHTS-OF-WAY

Section 1 Purpose and Policy:

- (a) The purpose of this Section of the Bend Code pertaining to vacation of rights-of-way shall be to provide persons who propose vacations and to those who must review the proposal with a guideline for review and a method and process of handling vacation petitions.
- (b) Vacation of public rights-of-way are not favored by the City of Bend and a person proposing a vacation has the burden of showing the vacation will serve the public interest.
- (c) Vacation of a publicly owned right-of-way may not be in the public interest if a property owner is financially benefited by the vacation, which comes as the result of the public relinquishing an interest in property, unless the private property owner agrees to pay an assessment to compensate the public for the relinquishment of the property interest. The determination of public interest may include consideration of the nature of the benefited property, such as whether the vacation would benefit a private property owner, or whether it would provide a public benefit, such as a benefit to a charitable organization or a governmental entity.

Section 2 Vacation Petitions:

- (a) Whenever any person interested in any real property in the City of Bend desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a petition therefor with the City Recorder 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 such vacation.
- (b) The person presenting a petition to vacate a public right-of-way shall deposit with the recorder the sum as prescribed by resolution of the council from which the recorder shall deduct the cost of publishing and posting notices of the proposed vacation and such other expenses as are incurred. In case the actual cost exceeds the amount of the deposit, an additional sum, sufficient to cover such deficiency, shall be collected by the recorder before the vacation is completed. In case the actual costs are less than the amount deposited, any excess or balance shall be refunded.
- (c) The petition and appendages shall contain such information as is required by ORS 271.080 together with:

- (1) A title report verifying ownership of the property abutting the area proposed to be vacated and in the affected area; and
 - (2) A tax map showing the area proposed to be vacated and the area encompassing the affected area.
- (d) Where the city is the owner of property abutting the area proposed to be vacated
the city manager shall have the authority to give consent or withhold consent of initiating the vacation.
- (e) In addition to the above procedures, the Bend City Council may initiate a vacation according to the procedures in ORS 271.130.

Section 3 Review of Petition at the City Council Level:

- (a) After the petition is received by the City Recorder, the petition shall be placed on the agenda for the next City Council meeting, to be received by the City Council.
- (b) After receipt of the petition by the City Council, the petition shall be forwarded to the Bend Urban Area Planning Commission for consideration and a recommendation on the land use implications of the vacation. The petition shall also be reviewed by city staff for a determination of whether an assessment against the benefited property(s) is appropriate to service the public interest, and if so, the amount of the assessment.
- (c) Upon receipt of a copy of a petition for vacation, the Planning Commission shall notify all affected public utility companies of such petition. Responses from the utility companies shall be included in the Planning Commission's recommendation to council.
- (d) The recommendation from the Bend Urban Area Planning Commission shall be based upon the criteria outlined in Section 18-3.4 of this chapter.
- (e) The Bend Urban Area Planning Commission shall return the petition for vacation to the City Council for a public hearing before the City Council. The Urban Area Planning Commission will also submit a report making recommendation to the City Council regarding the proposed vacation, which report shall focus on the land use issues involved in the vacation decision.
- (f) The Planning Commission's report shall be provided to the affected owner(s) within 10 days of the Planning Commission decision.

- (g) After the vacation petition is received, and prior to consideration of the vacation petition by the Bend City Council, staff shall, through consultation with an appraiser or qualified members of city staff, determine the value of the vacation to the affected property(s). Staff shall notify the affected owner(s) of staff's determination of the value sufficiently in advance of the public hearing conducted by the Bend City Council to allow the affected owner(s) to obtain their own valuation data. Staff shall meet with the affected owner(s) in advance of the city council's public hearing to attempt to reach mutual agreement as to the value of the benefit to the affected property if the vacation is approved. If staff and the affected Property owner(s) are able to agree on a value to be assessed against the property benefited by the vacation, then the affected property owner(s) shall sign a written acknowledgement that they will not protest the assessment, and the agreement shall be presented to the council for its consideration at the public hearing conducted prior to adoption of a vacation ordinance.

Section 4 Guidelines:

The guidelines set forth here are intended to assist the staff and Council in reviewing proposed vacations. They are not intended to be exclusive. The City Council, in its sole discretion, must still determine whether or not a proposed vacation would prejudice the public interest (ORS 271.120). Staff, the Planning Commission and the City Council shall consider the following:

- (a) Whether there is a public use of the right-of-way at the time the proposal is submitted.
- (b) Whether any reasonable use of the right-of-way could exist in the future. Reasonable use includes, but is not limited to:
- (1) streets;
 - (2) bike paths;
 - (3) jogging trails;
 - (4) drainage areas.
- (c) If utilities are located within the proposed right-of-way and no other reasonable use could be made of the right-of-way, the City may vacate the right-of-way with a reservation for utility easements.
- (d) When determining whether it is in the public interest to make an assessment against property benefited by the vacation, and if so, the amount of such assessment, the City Staff and the City Council may consider the means by which the City of Bend acquired the property interest subject to the vacation petition, including any consideration paid at the time of acquisition, and any other factors involved in the proposed vacation that the council deems relevant.

Section 5 Grant or Denial; Assessments:

- (a) If the vacation proposal meets the guidelines set forth above and no person with standing to do so makes a valid objection to the proposed vacation, the City Council may vacate the right-of-way or a portion of the right-of-way if it finds the public interest will not be prejudiced.
- (b) The council shall conduct a public hearing on the question of whether a petition for the vacation of a street, alley, plat, or other public place, or any part thereof, is in the public interest and should be granted. At the hearing, the affected property owner(s) may present evidence regarding any aspect of the vacation, including the recommended assessment. The council shall hear all other evidence relevant to its determination. If the council or the affected property owner(s) disagree with the staff recommendation as to the value of the benefit to the affected property(s) as a result of the vacation, then the city council and the affected owner(s) shall attempt to reach agreement during the public hearing. And such agreement shall be reduced to writing following the public hearing, and signed by the affected property owner(s). If the council agrees with the proposed valuation of the benefit to the affected property(s) previously reached between staff and the affected owner(s) (if such agreement was reached), then council may approve the amount of the benefit assessment. Thereafter, the council may, if it finds that the vacation would not prejudice the public interest, hold a first reading of an ordinance granting the vacation in whole or in part, or may, by resolution, deny the same in whole or in part, or may, by ordinance, grant the same with such conditions or reservations as would appear to be for the public interest, including reservations pertaining to the maintenance and use of underground public utilities in the portion vacated, and may make an assessment and provide for the payment to the city of such sum of money as the council may find to be just and equitable as an assessment of special benefit upon the real property abutting upon the vacated area, and the costs of curbs, drainage, paving, sewer or other local improvement already completed or to be constructed upon the area vacated. The assessments, together with all costs shall not exceed the amount of special benefit resulting or inuring to the abutting property by reason of such vacation. In lieu of paying the assessment, the owner may make application to pay the sum of money due in installments, as provided in the Bancroft Bonding Act in the same manner as other assessment liens in the city. In such case, the city shall have a lien against the benefited property in the amount of the assessment, plus interest in the amount then charged for Bancroft Bond assessments. The council shall include in the vacation ordinance the amount of the assessment and the Finance Department shall enter such assessment in the docket of city liens.

- (c) In the event any such petition is wholly denied, only the cost of publishing and posting occasioned by the petition shall be retained. Any moneys retained, and any sum assessed and collected as benefits, shall be paid into the city's general fund.
- (d) The council's action in granting a petition for vacation shall be by ordinance. The council's action denying a petition shall be by resolution. Any action taken shall conform with the Bend Urban Area General Plan.

Section 6 Satisfaction of Conditions Attached to Vacation:

- (a) Where conditions have been attached by council to the vacation approval, petitioners shall, prior to council's consideration of the vacation ordinance, file with the Recorder a document accepting the terms and conditions of the approval.
- (b) Satisfaction of a condition may be delayed if:
- (1) The petitioner posts a performance bond in the amount of the project cost as estimated by the director of public works;
 - (2) It is agreed in writing that the work will be completed within one year; and
 - (3) The petitioner grants to the city a right of access to the property and a right to complete the improvement in the form of covenants which shall be recorded with the county.

Section 7 Recordation of Ordinance:

- (a) A certified copy of the ordinance vacating any street, alley, plat, or other public place and any map, plat or other record in regard thereto which may be required or provided by law, shall be filed for record with the county clerk by the city recorder. The recorder shall also file a certified copy of any such ordinance with the county assessor, county surveyor and each affected public utility.
- (b) (b) No vacation shall be effective until the ordinance vacating the property is recorded by the city recorder with the county clerk, assessor and surveyor.
- (c) No vacation shall be recorded until:

- (1) All assessments have been paid or an application to pay said assessments has been properly filed;
- (2) All required legal documents have been signed and filed; and

- (3) The petitioners have complied with all of the applicable conditions attached to the vacation approval as provided pursuant to the provisions of this chapter.

Section 8 Procedures are Supplemental to State Law:

The procedures in this chapter are in addition to the provisions of ORS 271.080 through 271.230, but do not supercede them.

[10-18 Sections 1 through 8 added by Ord. NS-1964, passed March 16, 2005]