

First Reading: 6/5/2018

Second Reading: 6/19/18

ORDINANCE NO. 984

**AN ORDINANCE OF THE CITY OF BENTON CITY,
WASHINGTON, CREATING A NEW CHAPTER 12.10
"VACATION OF STREETS, ALLEYS, AND ACCESS
EASEMENTS"**

WHEREAS, the City of Benton City is authorized by RCW 35.79 to vacate on the terms provided therein, streets, alleys, and access easements deemed no longer needed or beneficial for public transportation; and

WHEREAS, the City Council may provide such procedures as necessary for initiating or considering a petition for the vacation of public right-of-ways for the purpose of streets, roads, alleys, and access easements. NOW, THEREFORE,

**THE CITY COUNCIL OF THE CITY OF BENTON CITY, WASHINGTON, DO
ORDAIN AS FOLLOWS:**

Section 1. That a new Chapter 12.10 entitled "Vacation of Streets, Alleys, and Access Easements" of the Benton City Municipal Code shall be and hereby is created and shall read as follow:

Chapter 12.10

VACATION OF STREETS, ALLEYS, AND ACCESS EASEMENTS

Sections:

- 12.10.010 Purpose.
- 12.10.020 Initiation of Proceedings.
- 12.10.030 Petition Method.
- 12.10.040 Public Hearing.
- 12.10.050 Notice of Hearing.
- 12.10.060 Objection by Property Owners.
- 12.10.070 Criteria.
- 12.10.080 Reserve Easements.
- 12.10.090 Vacation Agreement.
- 12.10.100 Appraisals and Appraisal Fees.
- 12.10.110 Survey Required.
- 12.10.120 Compensation for Vacated Right-Of-Way
- 12.10.130 Vacation Ordinance.
- 12.10.140 Use Of Vacation Payment.

12.10.010 **Purpose.** This Chapter establishes the procedure and criteria for consideration and determination of vacation of streets, alleys, and access easements relating to street, pedestrian, or travel purposes. This Chapter shall not apply to the vacation or termination of any other types of public easements. All other real property, easements and licenses shall be vacated or extinguished by Quit Claim Ddeed upon administrative determination that such is no longer necessary for municipal purposes. Easements established by dedication shall be extinguished pursuant to RCW 64.04.175.

12.10.020 **Initiation of Proceedings.** A vacation may be initiated by:

- A. A Resolution of the City Council; or
- B. A petition signed by the owners of more than two-thirds of the property abutting the part of the street or alley to be vacated, or, in the case of an easement, the owners of two-thirds of the property underlying the portion of the easement to be vacated.

12.10.030 **Petition Method.**

- A. An applicant shall apply for a vacation by submitting the following:
 - 1. A vacation petition upon forms provided by the City;
 - 2. A legal description of the area to be vacated prepared by a licensed surveyor when requested by the City or except as provided in Section 12.10.110;
 - 3. For each petitioner, a title report indicating ownership and providing a legal description of the property owned by the petitioner unless waived as provided in Section 12.10.120 (B);
 - 4. The vacation application fee as provided in the City's current Fee Resolution;
 - 5. A signed agreement to pay the cost of an appraisal unless waived as provided in Section 12.10.120 (B); and
 - 6. Any additional information or material that the Mayor or his/her designee determines is reasonably necessary for the City Council to consider the requested vacation.
- B. The petition shall be filed with the City Clerk, and the petition shall be signed by the owners of more than two-thirds of the property abutting

upon the street or alley (based on front footage), or underlying the public easement (based on square footage).

12.10.040 **Public Hearing.** Upon receiving a complete application for vacation, or upon passage of a Resolution by the City Council seeking vacation, the City Council shall by Resolution, fix a time when the City will hold a public hearing on the proposed vacation. The hearing will be not more than sixty (60) days nor less than twenty (20) days after the date of the passage of such Resolution. The Resolution seeking vacation by the City Council and setting the public hearing may be consolidated to a single Resolution.

12.10.050 **Notice of Hearing.**

- A. On passage of the Resolution provided in Section 12.10.040 above, the City shall give notice at least twenty (20) days before the public hearing of the time, date and place for the public hearing.
- B. Content. The public notice shall contain the following information:
 - 1. A statement that a request to vacate the street, alley, or access easement will be considered by the City Council;
 - 2. A statement of the date, time, and place of the public hearing before the City Council;
 - 3. A location description along with a vicinity map that identifies the street, alley, or access easement proposed to be vacated; and
 - 4. A statement of the right of any person to submit written comments to the City Council prior to or at the public hearing, and to appear before the City Council at the hearing to give testimony.
- C. Distribution of Notice. Distribution of the public notice shall be as follows:
 - 1. A copy will be sent, by mail, to the abutting owner of each parcel of real property at the address designated on the official records of Benton County.
 - 2. To the owners of each parcel of real property within three hundred (300) feet of any boundary of the street, alley, or public access easement to be vacated unless the street or alley is unimproved and has previously been determined by Council not to be needed as a street or alley.
 - 3. A copy of the Notice will be published in the official newspaper of the City.

4. A copy of the Notice will be posted in three public places in the City and posted in a conspicuous place on the street or alley sought to be vacated.

12.10.060 **Objection by Property Owners.** If fifty percent (50%) or more of the abutting property owners on the street or alley (based on front footage), or the underlying public easement (based on square footage), file written objections to the City Council in opposition to the vacation prior to the time of or at the hearing, the City shall be prohibited from proceeding with the public hearing or granting the vacation.

12.10.070 **Criteria.** The City Council shall use the following criteria for approval of the petition:

- A. The vacation shall not adversely affect traffic accessibility and circulation within the immediate area or within the City as a whole;
- B. The right-of-way is not contemplated or needed for future public use;
- C. No abutting property will become landlocked, or its access substantially impaired; and
- D. The public needs shall not be adversely affected and the vacation will provide a public benefit or serve a public purpose.

12.10.080 **Reserve Easements.** In vacating a street, alley, or public easement, the City may reserve for the City any easements or other rights to exercise and grant any easement for public utilities and services, pedestrian trail purposes, and any other type of easement relating to the City's right to control, use and manage its rights-of way.

12.10.090 **Vacation Agreement.** At any time prior to the City Council's final decision on vacation, the applicant may present to the City a voluntary vacation agreement containing special terms that would apply to the vacation if the application is approved. The City Council, upon approval of the terms of such agreement, may vacate a street, alley, or access easement incorporating such terms and subject to the criteria in Section 12.10.070 above.

12.10.100 **Appraisals and Appraisal Fees.** The appraisal method shall be determined by the City within its sole discretion as to most accurately determine the fair market of the right-of-way proposed for vacation. An appraisal of the right-of-way proposed for vacation shall be made by one or more of the following methods:

- A. The assessed value of the comparable abutting properties (without improvements) shall be obtained from the records of the Benton County Assessor. The average of such values, on a square foot basis, shall be applied to the right-of-way which is proposed for vacation.
- B. The petitioners shall be required to submit a report of a professional appraiser to the City, stating the fair market value of the right-of-way proposed for vacation.
- C. The City shall obtain a report for one or more professional appraisers stating the fair market value of the right-of-way proposed for vacation. The cost of such report or reports shall be paid by the petitioner prior to the time of the public hearing.

12.10.110 **Survey Required.** The petitioner shall submit with its application provided in Section 12.10.030 a professional survey of the property proposed for vacation with the boundaries of the proposed vacation marked upon the ground with an accurate legal description of the proposed vacation, to be furnished to the City. The City may waive this requirement if the location and legal description of the street or alley proposed for vacation is sufficiently known to the City so that an accurate legal description of the proposed vacation can be known with certainty.

12.10.120 **Compensation for Vacated Right-Of-Way.**

- A. The City Council may require the petitioners to compensate the City:
 - 1. Where the street or alley, or access easement, has been part of a dedicated public right-of-way for 25 years or more, or was acquired at public expense, in an amount that does not exceed the full appraised value of the area vacated.
 - 2. Where the street or alley, or access easement, has not been part of a dedicated right-of-way for 25 years or more, or was acquired at public expense, in an amount which equals one-half of the appraised value of the area vacated.
- B. Compensation for the vacated areas, and an appraisal and title report as required by Section 12.10.100 and 12.10.030 above, may be waived in whole or in part by the City if one or more of the following apply:
 - 1. The vacation is initiated by the City Council by Resolution;
 - 2. The vacation is at the request of the City;

3. The right-of-way to be vacated was previously determined by the City Council not to be essential to public traffic circulation and available for vacation;
4. The grant of substitute public right-of-way which has a value as a right-of-way at least equal to that right-of-way to be vacated; and
5. The resulting benefit to the community of the project requiring the vacation outweighs the appraised value of the right-of-way to be vacated.

12.10.130 **Vacation Ordinance.** Following the public hearing thereon, the City Council may authorize by Ordinance the vacation of such street, alley, access easement, or any part thereof. Such Ordinance may provide for the retention by the City of all easements or rights with respect to the vacated land for the construction, repair or maintenance of public utilities and services. If the City Council determines that compensation shall be paid as a condition of the vacation, the Ordinance shall not become effective, published or recorded until the compensation has been paid in full.

12.10.140 **Use of Vacation Payment.** One-half of the revenue received by the City as compensation for the right-of-way vacated shall be dedicated to the acquisition, improvement, development and related maintenance of public open space or transportation capital projects within the City.

Section 2. This Ordinance shall take full force and effect five (5) days after its approval, passage and publication as required by law.

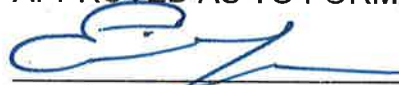
PASSED by the City Council of the City of Benton City, Washington, and approved as provided by law this 19 day of June, 2018.


Linda Lehman, Mayor

ATTEST:


Stephanie Haug, MMC
City Clerk/Treasurer

APPROVED AS TO FORM:


Kerr Law Group
City Attorney