

Ordinance No. 1003

MEDINA CITY COUNCIL

AN ORDINANCE OF THE CITY OF MEDINA, WASHINGTON, ADDING A NEW CHAPTER 12.44 TO THE MEDINA MUNICIPAL CODE REGARDING STREET VACATION POLICIES AND PROCEDURES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Medina Municipal Code (MMC) does not contain street vacation policies or procedures, which inhibits the City's efficient consideration and determination of petitions seeking vacation of City streets; and

WHEREAS, the City Council desires to establish street vacation policies, procedures, standards and criteria to better guide the City and the City Council in addressing street vacation petitions; and

WHEREAS, the Council engaged in a lengthy process of developing comprehensive street vacation policies and procedures, including legislative hearings regarding proposed new Chapter 12.44; and

WHEREAS, the City Council has duly considered **Exhibit A** to this Ordinance, comprising a new chapter 12.44 of the MMC entitled Street Vacations, and finds that it will provide the structure and guidance needed to address future street vacations, will reduce the City's costs and expenses in performing such actions, and will enable better decisions in the public interest;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MEDINA, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Adopt New MMC Chapter 12.44. For the reasons set forth above, the City Council hereby adopts new Chapter 12.44, entitled Street Vacations, into the Medina Municipal Code, all as set forth in attached **Exhibit A**, incorporated herein by this reference.

Section 2. Corrections. The City Clerk and codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance, including but not limited to the correction of scrivener and clerical errors, references, ordinance numbering, section/subsection numbering and any references thereto.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this Ordinance.

Section 4. Effective Date. This Ordinance or a summary thereof consisting of the title shall be published in the official newspaper of the City and shall take effect and be in full force five (5) days after such publication.

ATTACHMENT 1

APPROVED BY THE CITY COUNCIL OF THE CITY OF MEDINA ON THE 12TH DAY OF JULY, 2021 AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THE 12TH DAY OF JULY, 2021.

Jessica Rossman, Mayor

Approved as to form:
Ogden Murphy Wallace, PLLC

Attest:

Scott M. Missall, City Attorney

Aimee Kellerman, City Clerk

PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.:

EXHIBIT A

Medina Municipal Code Title 12—Streets, Sidewalks and Public Places

New Chapter 12.44 Street Vacations

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12.44.010 Purpose.

The purpose of this chapter 12.44 is to establish procedures and criteria the city will use to review and decide upon the vacation of public streets, alleys, sidewalks, trails and any other public grants, dedications and easements relating to street, pedestrian, or travel purposes within the city. This chapter is intended to be consistent with, implement and supplement RCW Chapter 35.79, entitled Streets—Vacation.

12.44.020 Applicability.

This chapter applies to every request for vacation of public streets, alleys, sidewalks, trails and any other public grants, dedications and easements relating to street, pedestrian, or travel purposes within the city, and shall not apply to vacation or termination of other types of public property.

12.44.030 Definitions.

For the purpose of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. Words not otherwise defined shall have their common and ordinary meaning:

A. "Owner" means the owners of fee title, mortgagors, and/or contract vendees of any interest in real estate.

B. "Petition" means a complete and sufficient petition meeting the requirements of this chapter and applicable state law.

C. "Petitioner" means any party who has filed a petition for vacation with the city clerk.

D. "Public right-of-way" or "public ROW" means public streets, alleys, sidewalks, trails and any other public grants, dedications and easements relating to street, pedestrian, or travel purposes within the city.

E. "Subject property" means the public street, alley, sidewalk, trail, and/or any other public property or easement, or portion thereof, sought to be vacated.

12.44.040 Initiation of proceedings.

A vacation may be initiated in two ways:

A. A resolution of the city council.

B. A petition of the owners of more than two-thirds of the property abutting or underlying the subject property as may be applicable.

12.44.050 Petition by owners.

The owners of an interest in real estate abutting upon or underlying public ROW may petition the city council for vacation thereof in accordance with requirements of this chapter.

A. The petitioner shall apply for a vacation by submitting the following to the city clerk:

1. A vacation petition with supporting affidavits on forms provided by the city.
2. A diagram of the location and a survey of the subject property and immediate area of the proposed vacation including the abutting and/or underlying properties, all prepared by a licensed surveyor registered in the state of Washington.
3. A legal description of the subject property prepared by a licensed surveyor registered in the state of Washington.
4. For each abutting and underlying property and petitioner, a title report indicating the extent and type of ownership and providing a legal description of the petitioner's property.
5. The vacation fees as established by this chapter and city ordinance.
6. Any additional information or material the city determines is reasonably necessary for the city council to understand, consider and evaluate the requested vacation.

B. The petition shall be filed with the city clerk and shall be signed by owners of more than two-thirds of the property abutting the subject property (based on front footage) or underlying the subject property (based on square footage).

C. The city clerk shall determine the petition's compliance with this chapter. For the purpose of determining the sufficiency of signatures of owners of private property on a petition or a consent to vacate determined by the city council, the following rules shall govern as applicable:

1. The signature of an owner of property shall be as set forth in the King County assessor records and confirmed by a title report.
2. In the case of a property subject to a contract of purchase, the signature of the contract grantor and grantee shall be required.
3. In the case of property ownership by corporation or similar entity, the signature of the officer authorized by the bylaws and resolution of the board of directors evidenced by an excerpt of the bylaws and copy of the resolution, each duly certified by the secretary of the corporation, and granting such authority.
4. In the case of property owned or controlled by an estate, guardian or conservator of a decedent or incompetent, the signature of the duly qualified administrator, executor or guardian accompanied by a duly certified copy of his/her judicial appointment or designation.

12.44.060 Resolution by council.

The city council may initiate vacation procedures of public ROW by resolution, which shall contain a legal description and a survey of the subject property, and such other information as the city council may determine appropriate.

12.44.070 Appraisals.

Determinations of fair market value of the subject property shall be made by MAI appraisal of the subject property at the direction of the city manager or designee. Petitioners shall pay the cost of all such appraisals as established in MMC 12.44.080. Such appraisals shall take into account the full value of the released rights and of any rights retained by the city for future use(s) which would restrict the private use of the vacated property.

12.44.080 Petition fees and costs; Compensation.

A. The petition, properly signed, shall be filed with the city clerk and accompanied by payment of the application fee and the estimated appraisal cost, which amounts shall be paid into the general fund of the city to defray the costs and expenses incurred by the city to: appraise the subject property, determine the sufficiency of the petition, evaluate and investigate the petition, and report the facts, circumstances and conclusions concerning the petition to the city council. Fees and costs shall not be returned or refunded to the petitioners regardless of the city council's action on the petition.

B. The amount of the fees and costs due upon filing shall be as follows:

1. The minimum application fee established by the city's then current fee schedule.
2. An appraisal fee deposit of \$2,500, which may be adjusted by the city manager up to the amount of the MAI appraisal bid or estimate submitted to the city.

C. In the event that the application fee and/or the appraisal costs set forth in subsection (B) of this section is insufficient to reimburse the city for all of the city's costs and expenses incurred in

relation to the petition, the balance shall be paid by the petitioner immediately upon receipt of the city's invoice.

D. In the event the vacation is granted by the city council, the petitioner shall immediately pay upon receipt of an invoice the amount required by the city council as compensation for the area being vacated as provided in MMC 12.44.180. A vacation ordinance shall not be effective until such time as the petitioner pays all sums due to the city, including all compensation due to the city for the vacation and all costs and expenses of the city in processing the petition. The city shall not record an approved vacation ordinance until such time as all such compensation, fees, costs and reimbursements are paid in full. If any portion of such amount remains unpaid for 30 days after submittal of a final invoice to the petitioner, the city council shall rescind and vacate the approved vacation ordinance.

E. In the event that the city council initiates a vacation, fees shall not be required unless council directs otherwise.

12.44.090 Date of public hearing.

Upon determining the application for vacation is complete, or upon passage of a resolution by the city council seeking vacation, the 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 days nor less than twenty days after the date of passage of the resolution scheduling the public hearing.

12.44.100 Notice of public hearing.

A. Upon the passage of the council resolution fixing the date and time for a public hearing, the city clerk shall give twenty days' notice of the pendency of the petition.

B. The hearing notice shall contain the following information: a statement that a petition has been filed to vacate the subject property; the date, time and place fixed for the hearing of the petition; that interested persons may appear at the hearing and be heard for or against the petition; and that interested persons may submit written comment to the city clerk prior to or at the hearing.

C. The city clerk shall post and distribute the hearing notice as follows:

1. A copy shall be posted in three conspicuous public places in the city.
2. A copy shall be posted in a conspicuous place on the subject property or at a nearby location that can be viewed by the public.
3. A copy shall be posted on the city's website.
4. A copy shall be published in the official newspaper of the city.
5. A copy shall be mailed to each owner of property within 300 feet of the subject property, including all the petitioners, at a local address if a resident of the city, or otherwise to the last address showing on the records of the King County assessor.

12.44.110 Protest.

If fifty percent of the abutting property owners file written objection to a city council-initiated vacation with the city clerk prior to the time of the hearing, the city council shall be prohibited from proceeding with the vacation.

12.44.120 Staff report.

A. The planning manager and/or public works director or their designee(s) shall prepare a staff report which shall identify and address the requirements of this section, the vacation criteria in MMC 12.44.140, and all other pertinent issues raised by or resulting from the vacation. The staff report shall be presented to the city council at the public hearing and as otherwise requested, appropriate or necessary, and may be supplemented as needed.

B. In preparing the staff report, the manager and/or director shall solicit comments and input from each of the city's departments, and may solicit comments and input from other governmental agencies and entities, from utility providers having an interest or jurisdiction concerning utilities within the boundaries of the city, and from nearby or affected city residents.

C. The staff report shall minimally contain the following information:

1. All application materials submitted by the petitioner.
2. All comments regarding the vacation received by the city prior to distribution of the staff report.
3. Maps, diagrams and other information pertinent to and helpful for the city council's review, understanding and decision.
4. An analysis and evaluation of the proposed vacation relative to the following: the provisions of this chapter; applicable provisions of the MMC and Medina Comprehensive Plan, specifically including zoning and land use regulations; prior and pending vacations in the vicinity; and pertinent state laws and regulations.
5. A recent appraisal of the subject property in accordance with MMC 12.44.070.
6. A recommendation of the appropriate city council action regarding the petition.

D. Not less than five days prior to the hearing, the city clerk shall distribute the staff report to the city council and staff, each petitioner, and anyone submitting comments to the city regarding the petition or making a written request for a copy of the staff report.

12.44.130 Hearing.

A. At the day and time appointed for the hearing of the petition or city council resolution, or at such other day and time as the same may be continued or adjourned to by the city council, the matter shall be considered and persons desiring to speak for or against the vacation shall be heard in accordance with the council's usual rules.

B. The city council may deliberate on the merits of the petition in accordance with its usual rules, may adjourn from time to time and may recess to executive session as needed, may require additional information and evaluation from any petitioner or city staff, and may continue and resume the hearing as appropriate. At the conclusion of the city council's deliberations, the city council shall decide the petition in accordance with MMC 12.44.170.

12.44.140 Vacation criteria.

A. In determining whether to vacate the subject property, the city council shall consider, but shall not be limited to, the following criteria:

1. Whether a change of use or vacation of the subject property will provide a benefit to the city as determined by the council, including but not limited to any of the following examples: reduction of unnecessary ROW; preservation of streetscape character; expanding the city's property tax roll; addressing neighborhood requests related to traffic impacts; better accommodation of pedestrians, bicyclists, motorists and/or emergency responders; reservation of an easement will accommodate the city's current or projected needs.
2. Whether the subject property is no longer required for public use or public access.
3. Whether the substitution of a new and different public way would be more or less useful to the city and/or the public.
4. Whether conditions may or could change in the future, creating or providing a greater or different public use or need than presently exists.
5. Whether existing property access will be restricted or denied as a result of the vacation.
6. Whether objections to the petition or proposed vacation are made by (i) owners of private property (exclusive of petitioners) abutting or in proximity to the subject property, (ii) governmental agencies, (iii) private users of the subject property, and/or (iv) members of the general public.

12.44.150 Right to condition a vacation and reserve public uses or easements.

Ordinances vacating all or any portion of the subject property may contain and require:

- A. Conditions on the allowed use(s) that the city council determines to be in the public interest.
- B. Provisions reserving, retaining or requiring conveyance of easements for any public use or purpose, including without limitation construction, repair and maintenance of existing and future public utilities and services.

12.44.160 Limitations on waterfront streets.

A. The city council shall not vacate public ROW governed by this chapter if any portion of the subject property abuts a body of fresh or salt water, unless:

1. The vacation is sought to enable the city to acquire the subject property for port purposes, beach or waterfront access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses; or
2. The city council, by resolution, declares that the subject property is not presently being used as a street, alley or public easement and that the subject property is not suitable for any of the following purposes: port, beach or water access, boat moorage, launching sites, park, public view, recreation, or education; or
3. The vacation is sought to enable the city to implement a plan, adopted by resolution or ordinance, that provides comparable or improved public access to the same shoreline area to which the subject property abuts, had the subject property included in the plan not been vacated.

B. Before adopting a resolution vacating the subject property under subsection (A)(2) of this section, the city shall:

1. Compile an inventory of all rights-of-way within the city that abut the same body of water that is abutted by the subject property;
2. Conduct a study to determine if the subject property is suitable for use by the city for any of the following purposes: port, boat moorage, launching sites, beach or water access, park, public view, recreation, or education; and
3. Make a finding that the subject property is not suitable for any of the purposes listed under subsection (B)(2) of this section, and the vacation is in the public interest.

C. No vacation under this section shall be effective until the fair market value has been paid for the subject property and any other applicable provisions of this chapter have been met.

D. Moneys received from the vacation may be used by the city only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

12.44.170 City council decision.

The city council may grant or deny the petition in whole or in part and with or without conditions, reservations or requirements as the city council determines appropriate. Following the public hearing and conclusion of its deliberations, the city council shall either:

- A. Adopt an ordinance granting the vacation; or
- B. Adopt an ordinance denying the vacation; or
- C. Adopt a resolution of intent to vacate stating that the city council will, by ordinance, grant the vacation if the applicant meets specified conditions within 90 days, unless otherwise specified in the resolution.

12.44.180 Compensation for vacation.

A. Ordinances vacating any public ROW shall not be adopted by the city council until the owners of the property abutting the subject property shall compensate the city in the amount required by this subsection.

B. Monetary compensation to be paid to the city in an amount of up to one-half of the appraised value for the subject property; provided, that compensation may be required in an amount of up to the full appraised value of the subject property if any of the following applies to the street, alley, or public easement:

1. The subject property has been part of a dedicated public right-of-way for twenty-five years or more; or
2. The subject property or portions thereof were acquired at public expense; or
3. The subject property abuts a body of water as outlined in MMC 12.44.160

C. In lieu of payment for monetary compensation, the petitioners may grant or dedicate to the city for street or other purposes, real property useful for that purpose where the property to be acquired by such exchange has a fair market value of at least equal to the amount of cash compensation that would otherwise be required.

1. The city shall not be obligated to accept such an exchange and the decision of the city manager on the acceptability of the alternative property offered shall be final.

D. Where a vacation was initiated by city council resolution, abutting property owners may not be required to make payment to the city for such vacation where:

1. The street, alley or public easement was not acquired at city expense;
2. The city determines the street, alley or public easement is not needed for public travel either now or in the foreseeable future;
3. The city's maintenance or upkeep of the subject property is unrelated to any use of the street, alley, or public easement for public travel.

E. Where a vacation is applied for by or on behalf of another governmental agency or jurisdiction, the city council may waive any compensation required by this code and may also waive filing fees, if the council deems such a waiver to be in the public's interest and advantage.

1. A vacation of property in which compensation has been waived on behalf of a governmental agency or jurisdiction shall be accompanied by a covenant providing the city shall be compensated by the fair market value of the interest conveyed or vacated at the time of any future sale or lease of the subject property by said other governmental agency.

12.44.190 Title to vacated public ROW.

Title to any vacated portion of the subject property shall pass in accordance with Washington State statutory and common law governing title to vacated rights-of-way.