

**ORDINANCE NO. 1479**

**AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, RELATING TO THE PROCEDURES FOR RIGHT OF WAY VACATIONS, ADOPTING A NEW CHAPTER 14.07 OF THE RUSTON MUNICIPAL CODE TO ESTABLISH PROCEDURES CONSISTENT WITH CHAPTER 35.79 RCW FOR RIGHT OF WAY VACATIONS WITHIN THE CITY OF RUSTON, ESTABLISHING APPLICATION FEES AND COST RECOVERY REQUIREMENTS AND PAYMENT STANDARDS DEPENDING ON THE TYPE OF RIGHT OF WAY BEING VACATED, AND ESTABLISHING AN EFFECTIVE DATE.**

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WHEREAS, the City does not have any procedures in its code for the processing of requests for right of way vacations; and

WHEREAS, the City occasionally receives request to vacation portions of existing right of way and should have a clear procedure in its code for processing such requests; and

WHEREAS, any procedures for privately-initiated street vacations should ensure that the applicant(s) pay all of the costs of processing such application and also pay the City for the property to the fullest extent allowed by law in fairness to all taxpayers; and

WHEREAS, the City Council considered this Ordinance at a Regular Meeting for First Reading on November 17, 2015; and

WHEREAS, the City Council considered this Ordinance and adopted it at its Regular Meeting on Second Reading on December 1, 2015; **NOW THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF RUSTON, WASHINGTON, DOES  
HEREBY ORDAIN AS FOLLOWS:**

**Section 1. New Chapter Adopted.** The City Council hereby adopts a new chapter 14.07 to the Ruston Municipal Code, and shall read as follows:

## **Chapter 14.07**

### **VACATION OF PUBLIC RIGHT-OF-WAY**

#### **Sections:**

- 14.07.010 Chapter – Intent.
- 14.07.020 Owner defined – Establishing sufficiency of signatures on petitions.
- 14.07.030 Petition or resolution for vacation.
- 14.07.040 Filing petition – Fees and Survey requirement.
- 14.07.045 Limitations on vacations of streets abutting bodies of water — Procedure.
- 14.07.050 Notice of hearing.
- 14.07.060 Notice where vacation initiated by council – Objections.
- 14.07.070 Hearing.
- 14.07.080 Objections to vacations.
- 14.07.090 Granting vacation – Provision for rededication.
- 14.07.100 Objections to be in writing.
- 14.07.110 Amended petition.
- 14.07.120 Classifications of public ways for purpose of compensation.
- 14.07.130 Amount of compensation.
- 14.07.140 Appraisals.
- 14.07.150 Procedure where compensation required.
- 14.07.160 Property trade in lieu of payment.
- 14.07.170 Waiving compensation – Other governmental agencies.
- 14.07.180 Posting and mailing notices – Recording ordinance.

#### **14.07.010 Chapter – Intent.**

This chapter establishes the process and procedures for vacating streets, alleys and rights of way in the City of Ruston in conformance with State law, Chapter 35.79 RCW. It is the intent of this chapter to allow vacation of unneeded rights of way upon the request of abutting owners when in the public interest and upon full payment as described herein. When a vacation is initiated by a petitioner under this chapter, it is the intent that all costs of evaluating and processing such petition be borne by the applicant or applicants and not by the public at large.

#### **14.07.020 Owner defined – Establishing sufficiency of signatures on petitions.**

A. Owner. The term “owner of an interest in real estate” means and includes the owners of fee title, and contract vendees.

B. Sufficiency of Signature. For the purpose of determining the sufficiency of signatures of “owners of private property” on the petition, or consent to vacate, the following rules shall govern:

1. The signature of an owner, as determined by the records of the county comptroller shall be sufficient without the signature of his or her spouse.

2. In the case of mortgaged property, the signature of the mortgagor shall be sufficient.
3. In the case of property subject to a contract of purchase, the signatures of the contractor vendor and vendee shall be required.
4. In the case of ownership by a corporation, the signature of any officer authorized by the bylaws or resolution of the board of directors shall be sufficient when evidenced by an excerpt of the said bylaws or said resolution, certified by the secretary of said corporation, granting such authority.
5. In the case of property owned by the estate of a decedent or incompetent, the signature of the duly qualified administrator or executor or guardian shall be equivalent to the signature of the owner of the property.

#### **14.07.030 Petition or resolution for vacation.**

The owners of an interest in any real estate abutting upon any street or alley who may desire to vacate the street or alley, or any part thereof, may petition the council to make vacation, giving the description of the property to be vacated; or the council may itself initiate by resolution such vacation procedure. The petition or resolution shall be filed with the clerk, and, if the petition is signed by the owners of more than two-thirds of the property abutting upon the part of such street or alley sought to be vacated, the council by resolution, shall fix a time when the petition will be heard, which time shall not be more than 60 days nor less than 20 days after the date of passage of such resolution.

#### **14.07.040 Filing petition – Fees and Survey requirement.**

A. The petition, properly signed, shall be filed with the city clerk upon payment of a nonrefundable pre-hearing fee, which shall be paid into the general fund of the city to aid in defraying the expenses incurred by the city in checking the sufficiency of such petition and investigating or reporting the facts. The initial amount of such fee shall be a deposit of \$500.00 unless a different amount as may be set by resolution of the council after the effective date of this ordinance. Said fee shall be subject to change from time to time to allow for any changes in costs. If the city's actual costs for its review, including engineering and city attorney fees exceed the deposit, then the petition shall be charged with the additional actual expenses which shall be paid in full prior to the next step in the vacation process. Where one to five separate ownerships abut the proposed vacation, a minimum filing fee shall be charged; and an additional sum of \$100.00 shall be charged for each additional ownership over five (or such other updated amount established in accordance with the fee resolution). The petitioner also bears the costs of providing any information necessary for the review process such as project drawings, maps, EIS and traffic analysis as well as other costs related to the processing of the petition. In the event that the filing fee proves to be insufficient to cover all of the costs of processing the petition, the balance of said costs shall be paid to the city by the petitioner(s) before notices of hearing are mailed.

B. Survey Requirement. It shall be the duty of the city engineer to determine whether or not the location and legal description of the street or alley proposed for vacation are sufficiently known to the city so that an accurate legal description of the proposed vacation may be made, and so that the location of the property proposed for vacation can be known with certainty. If the city

engineer determines that these matters are not known or are not accurately known, then the city shall notify the petitioners of the necessity of having an accurate, professional survey of the property proposed for vacation within the boundaries of the proposed vacation marked upon the ground and an accurate legal description of the proposed vacation to be furnished to the city. The city shall not proceed further upon the vacation petition until such a survey has been done and accurate legal description received.

C. Subsequent to the hearing and to the conditional approval by council of the petition, should the petitioner elect to proceed, a post-hearing fee in the amount of \$500.00 (unless a different amount as may be set by resolution of the council after the effective date of this ordinance) shall be paid by the petitioner and deposited in the general fund of the city to defray expenses of the city in further processing the application. In the event that the post-hearing filing fee proves to be insufficient to cover all of the costs of processing the petition, the balance of said costs shall be paid to the city by the petitioner(s). The post-hearing fees shall be due from any petitioner whose application receives conditional approval on or after the effective date of the ordinance codified in this section.

D. In the event that the city council initiates a right-of-way vacation, fees shall not be required unless the council directs otherwise.

#### **14.07.045 Limitations on vacations of streets abutting bodies of water — Procedure.**

A. The city council shall not vacate a street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:

1. The vacation is sought to enable the city to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

2. The city, by resolution of the city council, declares that the street or alley is not presently being used as a street or alley and that the street or alley 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 streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

B. Before adopting a resolution vacating a street or alley 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 street or alley sought to be vacated;

2. Conduct a study to determine if the street or alley to be vacated 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;

3. Hold a public hearing on the proposed vacation in the manner required by this chapter, where in addition to the normal requirements for publishing notice, notice of the public hearing is posted conspicuously on the street or alley sought to be vacated, which posted notice indicates that the area is public access, it is proposed to be vacated, and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to a particular official indicating his or her objection; and

4. Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under (2) of this subsection, and that the vacation is in the public interest.

C. No vacation shall be effective until the fair market value has been paid for the street or alley that is vacated. 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.

#### **14.07.050 Notice of hearing.**

Upon passage of the resolution fixing the time for a public hearing, the city clerk shall cause a written notice of the pendency of the petition to be posted, at least 20 calendar days prior to the date set for hearing, in three public places in the city as determined by the City Clerk consistent with the intent to provide notice to City residents and a like notice to be posted in a conspicuous place on that portion of the street or alley sought to be vacated, and copies of such notice shall be mailed, at least 20 calendar days prior to date of hearing, to each owner of property within 300 feet of the right-of-way proposed to be vacated, including the petitioners, at a local address if a resident of the city, otherwise to the last address showing on the records of the county department of records and elections. Said notice shall contain a statement in that petition has been filed to vacate the portion described in the notice together with a statement of the time and place fixed for the hearing of the petition and inviting interested persons to appear and be heard for or against the granting thereof or to submit written comment prior to that date.

#### **14.07.060 Notice where vacation initiated by council – Objections.**

In all cases where the proceeding is initiated by resolution of the council without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley sought to be vacated, notice shall be given as provided in this chapter (14.07.050); provided, that if 50 percent of the abutting property owners file written objection to the proposed vacation with the clerk, prior to the time of the hearing, the council shall be prohibited from proceeding with the resolution.

#### **14.07.070 Hearing.**

At the time appointed for the hearing of the petition or resolution, or at such time as the same may be adjourned to by the council, the matter shall be considered and persons desiring to speak for or against the vacation thereof shall be heard. Following such hearing, the council shall determine:

A. Whether a change of use or vacation of the described portion will better serve the public good; or

B. Whether the street, alley or portion thereof is no longer required for public use; or

C. Whether the use thereof as a public way is of such public benefit as not to justify the cost of maintenance; or

D. Whether the substitution of a new and different thoroughfare would be more useful to the public; or

E. Whether conditions may so change in the future as to provide a greater public use or need than presently exists; and

F. Whether objections to the proposed vacation are made by owners of private property (exclusive of petitioners) abutting the same.

#### **14.07.080 Objections to vacations.**

In the event that the owners of any real estate abutting upon the portion of any street or alley sought to be vacated object to such vacation (exclusive of petitioners), the city council shall not vacate such street or alley or portion thereof without (1) determining the extent of the damage or injury to any objecting abutting owner whose vested rights shall be affected by such vacation and (2) making provision for the compensation thereof.

#### **14.07.090 Granting vacation – Provision for rededication.**

A. If there are no objections, by owners of real estate abutting on the portion of the street or alley to be vacated, sufficient to warrant retention of the right-of-way as determined by the council, and if the council deems that such vacation shall be to the public's interest and advantage, the council may, by ordinance and subject to provisions of this ordinance regarding payment of compensation, vacate such street, alley or part thereof reserving to the city an easement or the right to exercise and grant easement vacated land for the construction, repair and maintenance of public utilities and services and may impose such other conditions or limitations as it deems necessary and proper to preserve any desired public use or benefit. If the council finds that future development of undeveloped land abutting such street or alley may alter or increase need or public use in such strip, such vacation may be granted only upon execution of a covenant running with such abutting land to rededicate such portion upon a declaration of public use and necessity by the city council.

B. Any fees charged by the City Attorney for the preparation of an ordinance to vacate any street or alley, the petitioners shall reimburse the City for such fee in addition to the other fees and charges set forth herein.

#### **14.07.100 Objections to be in writing.**

Objections of abutting owners must be in writing and filed with the clerk or council before conclusion of said hearing.

#### **14.07.110 Amended petition.**

If, after a hearing, the council determines that the petition cannot be granted in whole, but that a vacation of a portion of the area described in the original petition should be vacated, then the council may order that said portion be vacated.

#### **14.07.120 Classifications of public ways for purpose of compensation.**

For purposes of this ordinance, all properties within the city primarily used or reserved for use as public ways, including streets and alleys, are declared to be within one of two classes:

A. Class I. Real property in which the city holds fee simple title, or in which it does not hold such a fee simple interest but which has been dedicated as public right-of-way for 25 years or more or in which the city has acquired at public expense.

B. Class II. Real property in which the interest of the city is limited to a public easement or right of use for particular purposes or easements conveyed to or held by the city for which no public funds have been expended in the acquisition.

#### **14.07.130 Amount of compensation.**

The amount of compensation required to be paid to the city as a condition precedent to the vacation of a public way shall be determined according to the following criteria:

A. Class I property shall be considered a sale of a capital asset and shall be compensated for at 100 percent of its fair market value;

B. Rights-of-way over Class II property shall be compensated for in the amount of 50 percent of the fair market value of said property.

#### **14.07.140 Appraisals.**

Determinations of fair market value for purposes of this chapter shall be made by appraisal of the subject property prepared at the direction of the city engineer or designee. The costs of any appraisals shall be added to the amount of compensation established by Section 14.07.130 of this ordinance. Such appraisals shall take into account any retained right of the city for future use which would restrict the private use of the property.

#### **14.07.150 Procedure where compensation required.**

In the case of Class I or II properties, upon a finding, after a public hearing, that the requirements for approval set forth in Section 14.07.070 are satisfied, the city council may adopt a motion to conditionally approve the petition and direct the city engineer to secure an appraisal of the subject property. The applicant shall post a \$1,000 cash deposit with the city clerk to ensure payment of the cost of the appraisal. Upon notification that the amount of required compensation has been established, the applicant shall have 90 days to deposit such amount together with appraisal costs with the city clerk. Credit shall be given for the \$1,000 deposit. Upon notification full payment of the costs of processing the vacation and the amount of payment established in 14.07.130, the city council shall, in accordance with its prior motion of approval, adopt an ordinance authorizing the

mayor to execute an appropriate deed to convey Class I property or adopt an ordinance of vacation of Class II property. All funds received as compensation pursuant to this chapter shall be deposited in the city's property fund, and one-half of the revenue received by the city as compensation for the area vacated must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city.

**14.07.160 Property trade in lieu of payment.**

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 at least equal to the amount of cash compensation that would otherwise be required. The city shall not be obligated to accept such an exchange and the decision of the mayor on the acceptability of the alternate property offered shall be final.

**14.07.170 Waiving compensation – Other governmental agencies.**

Where vacation or transfer of a public way 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 to the public's interest and advantage. A transfer or vacation of property in which compensation has been waived under this section shall be accompanied by a covenant providing that 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.

**14.07.180 Posting and mailing notices – Recording ordinance.**

Posting and mailing of the notices provided for in this chapter shall be the responsibility of the city clerk. As required by RCW 35.79.030, a certified copy of the ordinance vacating a street, alley or public place, or any portion thereof, shall be recorded by the city clerk and the office of the Pierce County auditor and assessor

**Section 2. Severability.** If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.


**Section 3. Publication.** This Ordinance shall be published by an approved summary consisting of the title.

**Section 4. Effective Date.** This Ordinance shall be effective five days after publication as provided by law.

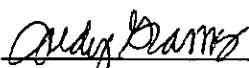


ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 1st day of December, 2015.

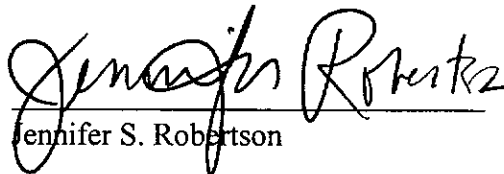
APPROVED by the Mayor this 1st day of December, 2015.

  
\_\_\_\_\_  
Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Judy Grams, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

  
\_\_\_\_\_  
Jennifer S. Robertson

FILED WITH THE CITY CLERK: 11/13/2015

PASSED BY THE CITY COUNCIL: \_\_\_\_\_

PUBLISHED: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

ORDINANCE NO: 1479