

## Chapter 12.28

### VACATION OF PUBLIC RIGHTS-OF-WAY

#### Sections:

- 12.28.010 Definitions**
- 12.28.020 Vacation of Public Way - Allowance**
- 12.28.030 Abutting Property Owners - Consent**
- 12.28.040 Proceedings - Person Interested in Real Property**
- 12.28.050 Proceedings - City Council**
- 12.28.060 Proceedings - Pendency**
- 12.28.070 Notice - Pendency of Proceedings and Hearing**
- 12.28.080 Objections - Effect of Failure - File Written Objections**
- 12.28.090 Hearing and Decision**
- 12.28.100 Conditions**
- 12.28.110 Approval of Vacation – Ordinance**

#### **12.28.010 Definitions.**

“Abutting Property Owner” means the owner of land directly adjacent to a public way proposed to be vacated.

“Affected Property Owner” means;

(i) the owner of the land lying on either side of a public way proposed to be vacated, and

(ii) the owners of land in the area extending laterally from the public way proposed to be vacated to the next street that serves as a parallel street, but in any case the area of land extending laterally from the public way proposed to be vacated for a distance not to exceed two hundred (200) feet, and

(C) Vacation proceedings shall be subject to the provisions of *ORS Chapter 271*, in addition to the provisions set forth in this ordinance.  
(*Ord. 98-05 §2, 1999*)

(iii) owners of land for a like lateral distance on either side of the public way for four hundred (400) feet along its course beyond each terminus of the part to be vacated; provided that where a public way is proposed to be vacated to its termini, the land embraced in an extension of the public way for a distance of four hundred (400) feet beyond each terminus shall also be counted.

“City Council/Council” means the common council of the *City of Port Orford*.

“Person Interested in Real Property” is

(i) the owner of real property; or

(ii) the purchaser of real property under a trust deed or other instrument; or

(iii) the holder of a future interest in real property.

“Planning Commission/Commission” means the Planning Commission of the City of Port Orford.

“Public Way” means any public street, alley, easement, public square or other public place.  
(*Ord. 98-05 § 1, 1999*)

#### **12.28.020 Vacation of Public Way – Allowance**

(A) All or part of any public way may be vacated when the public interest would not be prejudiced by the vacation thereof, except that existing public ways within coastal shore lands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred.

(B) Proceedings to vacate may be initiated by any person interested in any real property or by the City Council, either upon recommendation by the City of Port Orford Planning Commission or upon the Council’s own motion.

**12.28.030 Abutting Property Owners - Consent**

(A) No vacation shall be made of any public way, unless the written consent of all owners of property abutting the area to be vacated has been obtained and filed with the City Recorder.

(B) No vacation shall be made of any public way, if the public way to be vacated lies within five thousand (5,000) feet of the harbor or pier head line of the Port of Port Orford, unless the Port Commission approves of the proposed vacation in writing. (*Ord. 98-05 §3, 1999*)

**12.28.040 Proceedings - Person Interested in Real Property**

(A) Proceedings to vacate all or part of a public way may be initiated by a person interested in real property by filing a petition to vacated said public way with the City Recorder, and by paying a non-refundable filing fee, which shall be sufficient to cover the costs of publication of notices, posting and other expenses incurred in the vacation proceedings. The filing fee shall be set by resolution by the City Council. Upon initiation of proceedings by a petition to vacate a public way, the proposed vacation shall be referred to the Commission for evaluation pursuant to *Section 6 (b)* of this ordinance.

(B) The petition shall contain the following:

(1) A legal description of the public way proposed to be vacated, and a vicinity map drawn to a scale of one inch equal to one hundred feet (1" = 100') of the area proposed to be vacated and the immediately surrounding properties;

(2) The purpose for which the public way proposed to be vacated is to be used and the reason why the person wants to have the public way vacated, along with proposed findings justifying the vacation;

(3) A mailing list and prepared mailing labels

(A) Upon receipt of a completed petition to vacate, the City Recorder shall forward the petition to the Commission for review and

with the names of all abutting property owners and owners affected property, including tax lot numbers of the properties from the current records of the Curry County Assessor; and

(4) A notarized petition of consent to vacate by all owners of property abutting the area to be vacated and the owners of not less the two-thirds (2/3) of the area of all affected properties as defined in *Section (1)(b)* of this ordinance;

(5) A written statement fro the City of Port Orford Public Works Director that there are no city utility lines (water and sewer) located within the public way proposed to be vacated and that there is no foreseeable need for the city to retain the public way for future utility line use.

(C) No petition shall be deemed complete and no vacation shall be commenced until all the requirements of *subsection (b)* of this section have been complied with. (*Ord. 98-05 § 4, 1999*)

**12.28.050 Proceedings - City Council**

(A) Proceedings to vacate all or part of a public way may be initiated without a petition or consent of abutting and affected property owners by the Council upon its own motion or upon recommendation by the Commission. Upon initiation of proceedings by the Council by its own motion, the proposed vacation shall be referred to the Commission for evaluation pursuant to *Section 6 (b)* of this ordinance.

(B) No public way shall be vacated by proceedings initiated by the Council if the owners of a majority of the area of the affected properties object to the vacation, in writing, or if the public way would substantially affect the market value of abutting property, unless the abutting property owners waive any claim to damages resulting from the vacation. (*Ord. 98-05 § 5, 1999*)

**12.28.060 Proceedings - Pendency**

recommendation. The Commission shall review and evaluate the petition at the next regular meeting following receipt of the complete petition.

The Commission shall have a period of up to forty (40) days to review the petition and determine whether to recommend approval or denial of the petition to vacate. The Commission shall forward its recommendation to the Council for further action in the form of a written report.

(B) The Commission shall review and evaluate a proposed vacation initiated by the Council upon its own motion at the next regular meeting following referral of the motion to the Commission by the Council. The Commission shall have a period of up to forty (40) days to review the motion and determine whether to recommend approval or denial of the proposed vacation. The Commission shall forward its recommendation to the Council for further action in the form of a written report. (*Ord. 98-05 § 6, 1999*)

#### **12.28.070 Notice - Pendency of Proceedings and Hearing**

(A) After vacation proceedings have been initiated by petition, or upon motion by the Council, a date for a public hearing before the Council shall be set.

(1) The hearing on a petition to vacate all or part of a public way shall be held by the Council at the first regular council meeting after thirty (30) days from the date of filing of a complete petition to vacate.

(2) The hearing on vacation proceedings initiated by the Council upon its own motion shall be held within thirty (30) days of the date of the date the Commission forwards its recommendation to the Council.

(B) Notice of pendency of proceedings and hearing shall be published in a newspaper of general circulation once each week for three (3) consecutive weeks and shall be posted in two other public places within the City in addition to City Hall. The final publication shall be not less than seven (7) days prior to the date of the hearing. Within five (5) days after the first day of

#### **12.28.090 Hearing and Decision**

publication of the notice, notice of the hearing shall also be placed in conspicuous places at or near the ends of the public way proposed to be vacated, which shall be prominently headed "Notice of Street Vacation." The notice shall contain the following information:

(1) The date, time and place of the hearing;

(2) A description of the public way proposed to be vacated, which shall be sufficiently detailed to inform the public of the location of the public way and the affected properties. The description shall include a map of the public way and abutting properties, and the public way's postal; address, legal description and tax lot designation (if available);

(3) If the proceedings were initiated by petition, the names of the petitioners and the date the petition was filed; if the proceedings were initiated by motion of the Council, a statement to that effect;

(4) The name of an employee of the City from whom additional information may be obtained;

(5) A statement that objections in writing must be filed with the City Recorder prior to the public hearing; and

(6) Such other information as may be deemed relevant to the proceedings. (*Ord. 98-05 § 7, 1999*)

#### **12.28.080 Objections - Effect of Failure - File Written Objections**

(A) Any person may file written objections to a proposed vacation of a public way. The failure to file written objections with the City Recorder prior to the hearing shall be a conclusive waiver of the right to make any such objection and of the right to the regularity, validity and correctness of the vacation proceeding. (*Ord. 98-05 § 8, 1999*)

(A) The Council shall hold a public hearing on the date set and shall take testimony, receive

written objections and other evidence. The Council shall review the Commission's recommendation, and may continue the hearing and refer the proposed vacation back to the Commission for further considerations, After closing the hearing, the Council shall approve, conditionally approve, or deny a proposed vacation.

(B) No public way may be vacated unless and until the Council has adopted findings which substantiate all of the following:

(1) The proceedings for vacation:

(i) if the vacation proceedings were initiated by petition, consent of all abutting and affected property owners has been obtained; or

(ii) if the vacation proceedings were initiated by motion of the Council, a finding that the 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 proposal does not conflict with the comprehensive plan or other 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 Council, a finding that the vacation will not substantially diminish the marketability of the abutting property, unless the abutting property owners have waived in writing, any claim to damages; and

(6) If the public way to be vacated lies within five thousand (5,000) feet of the harbor or pier head line of the Port of Port Orford, that written consent of the Port Commission has been obtained. (*Ord. 98-05 § 9, 1999*)

**12.28.100**  
**Conditions**

(A) The Council may impose any of the following conditions on a proposed 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;

(3) Replatting or rededication of all or part of the public way to be dedicated;

(4) Improvement of a street or alley prior to rededication; or

(5) Protection of solar or wind access, or protection of wetlands or other natural resource.

(B) Compliance with any condition imposed pursuant to this section shall be at the sole expense of the petitioner.

(C) Concurrence with the vacation shall be obtained from the provider of any electrical, telephone, cable television service within the city which utilizes the public right-of-way for the provision of its services. (*Ord. 98-05 § 10, 1999*)

**12.28.110 Approval of Vacation – Ordinance**

(A) Upon approval of a proposed vacation of a public way and fulfillment of all required conditions, the Council shall enact a non-emergency ordinance which declared the public way vacated and which specifies the conditions upon which the vacation has been made.

(B) 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 by the petitioner. (*Ord. 98-05 § 11, 1999*)

