

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE VACATION OF STREETS AND ACCESS EASEMENTS; REPEALING CHAPTER 19.16 OF THE KIRKLAND MUNICIPAL CODE AND ADDING A NEW CHAPTER 19.16 TO THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Chapter 19.16 of the Kirkland Municipal Code is repealed.

Section 2. A new Chapter 19.16 is added to the Kirkland Municipal Code as follows:

Chapter 19.16

Vacation of Streets and Access Easements

19.16.010 Purpose.

This chapter establishes the procedure and criteria that the city will use to decide upon vacation of streets, alleys, and other types of public easements relating to street, pedestrian or travel purposes.

19.16.020 Applicability.

This chapter applies to requests for vacation of streets, alleys and public easements relating to street, pedestrian or travel purposes. This chapter shall not apply to vacation or termination of other types of public easements. As used in this chapter, the term "subject property" means the street, alley or public easement, or portions thereof, sought to be vacated.

19.16.030 Initiation of proceedings.

A vacation may be initiated by:

- (1) The city council; or
- (2) 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.

19.16.040 Petition for vacation brought by abutting property owners.

(1) The owners of an interest in any real estate abutting upon any street or alley, or underlying any public easement governed by this chapter, may petition the city council for vacation of the subject property.

(2) The applicant shall apply for a vacation by submitting the following:

- (a) a vacation petition with supporting affidavits on forms provided by the department of planning and community development ("planning department");
- (b) a legal description of the area to be vacated prepared by a licensed surveyor;
- (c) for each petitioner a title report indicating ownership and providing a legal description of the property owned by the petitioner;
- (d) 5 paper copies of a site map showing the subject property and showing all properties within 300 feet of any portion of the subject property. The site maps shall be at a scale of one inch equals one hundred feet;

- (e) an 8-½ inch by 11 inch clear plastic transparency of the site map;
 - (f) address labels containing the names and addresses of the owners of all property within 300 feet of any boundary of the subject property;
 - (g) a copy of the King County assessor's map identifying the properties specified in subsection (f);
 - (h) the vacation application fee as established by ordinance;
 - (i) a signed agreement to pay the cost of an appraisal as provided for in Section 19.16.170; and
 - (j) any additional information or material that the director of the planning department determines is reasonably necessary for the city council to consider the requested vacation.
- (3) The petition shall be filed with the planning department, and the petition shall be signed by the owners of more than two-thirds of the property abutting on the street or alley (based on front footage), or underlying the public easement (based on square footage).

19.16.050 Council resolution for vacation.

The city council may initiate, by resolution, vacation procedures. The resolution shall contain a legal description of the subject property.

19.16.060 Date of 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 60 days nor less than 20 days after the date of passage of the resolution scheduling the public hearing.

19.16.070 Public notification of hearing.

(1) Content. The director of the planning department shall prepare a public notice containing the following information:

- (a) a statement that a request to vacate the subject property will be considered by the city council;
- (b) a statement of the time and place of the public hearing before the city council;
- (c) a location description in non-legal language along with a vicinity map that identifies the subject property proposed to be vacated;
- (d) a statement that the vacation file is available for viewing at Kirkland City Hall; and
- (e) 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 comments orally.

(2) Distribution of notice of hearing. At least 20 calendar days before the public hearing, the director of the planning department shall distribute the public notice as follows:

- (a) a copy will be sent, by mail, to the owner of each piece of property within 300 feet of any boundary of the subject property;
- (b) a copy will be sent, by mail, to each resident living immediately adjacent to or on the subject property;
- (c) a copy will be published in the official newspaper of the city;
- (d) at least two copies will be posted in conspicuous public places in the city;
- (e) a copy will be posted on the subject property in the manner set out in subsection (3).

(3) Public notice sign. The applicant shall provide for and erect public notice signs at least 20 calendar days before the public hearing as follows:

(a) the sign shall be designed and constructed to city standards. A copy of the notice described in subsection (1) and a vicinity map shall be attached to each sign.

(b) the planning department is authorized to develop the standards for the public notice signs necessary for implementation of this section.

(c) one sign shall be erected on the subject property. The planning department may require that additional signs be erected on or near the subject property and placed so that the signs are conspicuously visible from an improved public right-of-way not subject to the vacation request. The department of planning and community development shall approve the location of each sign.

(d) the applicant shall post a deposit to ensure proper maintenance and removal of the signs.

(e) all signs shall be removed within seven calendar days after the final public hearing.

19.16.080 Objection by property owners.

If 50 percent or more of the abutting property owners file written objections to a city council initiated vacation with the city clerk prior to the time of hearing, then the city shall be prohibited from proceeding with the public hearing or granting the vacation. The calculation of the 50 percent threshold under this section shall be based on front footage, in the case of streets and alleys, and square footage of the easement area in the case of public easements.

19.16.090 Vacation of waterfront streets.

(1) The city shall not vacate a street, alley or public easement governed by this chapter if any portion of the subject property abuts a body of fresh or salt water unless:

(a) the vacation is sought to enable the city 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;

(b) 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

(c) 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.

(2) Before adopting a resolution vacating subject property under subsection 1(b), the city shall:

(a) 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;

(b) 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

(c) make a finding that the subject property is not suitable for any of the purposes listed under subsection 2(b), and that the vacation is in the public interest.

(3) No vacation under this section shall be effective until the fair market value has been paid for the subject property. Money 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.

19.16.100 Vacation file content and availability.

The planning director shall compile a vacation file that contains all information pertinent to the proposed vacation. This file shall be a public record. It shall be available for inspection and copying in the planning department during regular business hours.

19.16.110 Staff report preparation.

(1) Contents. The director of the planning department shall prepare a staff report containing the following information:

- (a) all pertinent application materials submitted by the applicant;
- (b) all comments regarding the vacation received in the planning department prior to distribution of the staff report;
- (c) an analysis of the requested vacation in relation to the provisions of this chapter and the applicable provisions of the comprehensive plan;
- (d) a recent appraisal of the subject property obtained by the city at the applicant's expense; and
- (e) a recommendation on the vacation.

(2) Distribution. Prior to the hearing, the planning director shall distribute the staff report to each member of the city council and each applicant.

19.16.120 Public hearing procedures.

(1) The city council shall hold a public hearing on each requested vacation. The hearing shall be open to the public. The city council shall make a complete electronic sound recording of each hearing.

(2) The city council may continue the hearing if, for any reason, it is unable to hear all of the public comments on the vacation, or if the city council determines that it needs more information on the vacation. If, during the hearing, the city council announces the time and place of the next hearing on the vacation, no further notice of the hearing need be given.

(3) At the outset of the hearing, the planning director shall provide an analysis of the requested vacation in relation to the provisions of this chapter and the applicable provisions of the comprehensive plan. The planning director shall also make a recommendation on the requested vacation.

(4) Any interested person may participate in the public hearing in either or both of the following ways:

- (a) by submitting written comments to the city council either by delivering the comments to the planning department prior to the hearing or by giving the comments directly to the city council at the hearing; and

- (b) by appearing in person, or through a representative, at the hearing and making oral comments directly to the city council. The city council may reasonably limit the extent of these oral comments to facilitate the orderly and timely conduct of the hearing.

19.16.130 Criteria for granting street vacation.

(1) The decision on a vacation application is a legislative determination. The city council may, in its discretion, vacate a street, alley or public easement governed by this chapter if it determines that vacation is in the public interest and that:

- (a) the street, alley, or public easement is not currently necessary for travel or other street purposes, nor likely to be in the future; and
 - (b) No property will be denied all access as a result of the vacation.
- (2) The city council may consider any other fact or issue it deems relevant when deciding whether to vacate a street, alley or public easement.

19.16.140 Right to reserve easements.

In vacating a street, alley or public easement governed by this chapter, the city council may reserve for the city any easements or the right to exercise and grant any easements for the following purposes:

- (1) public utilities and services;
- (2) pedestrian trail purposes; and
- (3) any other type of easement relating to the city's right to control, use and manage rights-of-way.

19.16.150 Voluntary agreement between city and applicant.

At any time prior to the city council's final decision on the vacation, the applicant and city staff may enter into a voluntary agreement containing special terms that would apply to the vacation if the application is approved. City staff will advise the city council of the terms contained in the voluntary agreement. The city council may vacate a street, alley or easement pursuant to such an agreement, subject to the criteria in Section 19.16.130.

19.16.160 Final decision.

(1) Following the public hearing, the city council shall, by motion approved by a majority of the entire membership in a roll call vote, either (a) adopt an ordinance granting the vacation; or (b) adopt a motion 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.

(2) The city may require the following as conditions:

(a) Monetary compensation to be paid to the city in an amount of up to one-half 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 the street, alley or public easement has been part of a dedicated public right-of-way for twenty-five years or more;

(b) The grant of a substitute public right-of-way which has value as right-of-way at least equal to the subject property; or

(c) Any combination of subsections 2(a) and (b); provided that the total value of the combined conditions shall not total more than the maximum amount of monetary compensation allowed under subsection (a).

(3) Within five working days of the city council's decision, the planning director shall mail a copy of the notice of decision to the applicants.

19.16.170 Appraisals and appraisal fees.

The planning director is authorized to obtain appraisals from qualified, independent appraisers as part of preparing staff reports on vacations. Applicants will pay the cost of such appraisals.

19.16.180 Title to vacated street or alley.

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

19.16.190 Vested rights not affected.

No vested rights shall be affected by the provisions of this chapter.

19.16.200 City use of revenue.

One-half of the revenue received by the city as compensation for the subject property must be dedicated to the acquisition, improvement, development, and related maintenance of public open space or transportation capital projects within the city.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.107, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this 7th day of November, 2001.

Signed in authentication thereof this 7th day of November, 2001.


 MAYOR

Attest:


 City Clerk

Approved as to Form:


 City Attorney

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PUBLICATION SUMMARY OF
ORDINANCE NO. 3803

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE VACATION OF STREETS AND ACCESS EASEMENTS; REPEALING CHAPTER 19.16 OF THE KIRKLAND MUNICIPAL CODE AND ADDING A NEW CHAPTER 19.16 TO THE KIRKLAND MUNICIPAL CODE

SECTION 1. Repeals Kirkland Municipal Code ("KMC") Chapter 19.16.

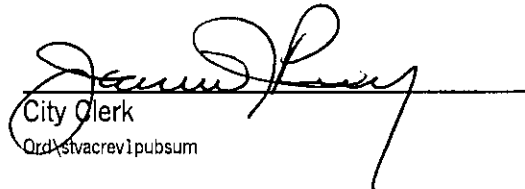
SECTION 2. Adds a new KMC Chapter 19.16, entitled Vacation of Streets and Access Easements, that incorporates changes in state law and also updates the City's procedures for street vacations.

SECTION 3. Contains a savings clause.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the 7th day of November, 2001.

I certify that the foregoing is a summary of Ordinance 3803 approved by the Kirkland City Council for summary publication.


City Clerk
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