

**CITY OF WEST RICHLAND
ORDINANCE NO. 16-20**

**AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON,
AMENDING WEST RICHLAND MUNICIPAL CODE CHAPTER 12.60,
RELINQUISHMENT OF PUBLIC EASEMENTS AND RENAMING THE
CHAPTER "VACATION OF PUBLIC UTILITY EASEMENTS"**

WHEREAS, the City Council finds it in the public interest to review and revise the city's procedures for processing relinquishments / vacations of public utility easements; and

WHEREAS, the RCW 35.94.040 states that a legislative authority may cause for lands, property, or equipment originally acquired for public utility purposes that is found to be surplus to the city's needs and is not required for providing continued public utility service may be conveyed; and

WHEREAS, the RCW 35.94.040 further states that the legislative authority must take such action via resolution following a public hearing; and

WHEREAS, the city considered this ordinance by a "first reading" in a regular meeting on May 5, 2020; and

WHEREAS, the City Council has determined that the proposed code amendments are consistent with the goals and policies of the City's comprehensive plan; and

WHEREAS, the City Council has determined that amending Chapter 12.60 of the City Code is in the public interest;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, does hereby ordain as follows:

Section 1. Adoption: West Richland Municipal Code Chapter 12.60 is hereby amended as set forth in **Attachment A**, attached hereto.


Section 2. Severability / Validity. The provisions of this ordinance are declared separate and severable. If any section, paragraph, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance.

Section 3. Effective Date. This ordinance shall take effect and be in force five (5) days after passage and publication of a summary thereof consisting of the title.

PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, at a regular meeting thereof this 19th day of May, 2020.


Brent Gerry, Mayor

ATTEST:



Julie Richardson, City Clerk

APPROVED AS TO FORM:



WSBA# 33673
Bronson Brown, City Attorney

**CITY OF WEST RICHLAND
ORDINANCE NO. ___-20
ATTACHMENT A**

Chapter 12.60

RELINQUISHMENT VACATION OF PUBLIC UTILITY EASEMENTS

Sections:

- 12.60.001 Purpose.**
- 12.60.005 Applicability.**
- 12.60.010 Relinquishment of public easements. Petition for vacation.**
- 12.60.015 Fees.**
- 12.60.020 Public utility easement relinquishment process. **Appraisals.****
- 12.60.025 **Notice of public hearing.****
- 12.60.030 Public access easement relinquishment process. **Protest.****
- 12.60.040 **Public hearing and criteria.****
- 12.60.050 **Compensation for vacation.****
- 12.60.055 **Payment of compensation or conveyance.****
- 12.60.060 **Posting and mailing notices – Recording resolution.****

12.60.001 Purpose.

This chapter establishes the procedure and criteria that the city will use to decide upon vacation of public utility easements.

12.60.005 Applicability.

A. This chapter applies to requests for vacation of public utility easements, including not but limited to easements for sanitary sewers, storm drains, fuel gas pipes, underground electrical lines, telephone lines and drainage easements. This process does not apply to preservation or conservation easements, view easements, avigation easements, recreational easements, and so forth. This chapter shall not apply to vacation, relinquishment, or termination of streets, alleys, road right-of-way or access easements, which are addressed in WRMC Chapter 12.40 of this title.

B. These procedures do not apply to the vacation of entire subdivisions or short plats, which is addressed in RCW 58.17.212.

12.60.010 Relinquishment of public easements. Petition for vacation.

~~The city of West Richland may authorize the relinquishment of a public access or public utility easement upon determining the following—~~

~~A. A complete application for easement relinquishment, including the proposed easement relinquishment form in legal format, has been submitted to community development along with the applicable fee as established by the master fee schedule.~~

~~B. All franchise utilities have approved the relinquishment request.~~

~~C. Each city department (police, finance, public works, and community development), as well as Benton County Fire District No. 4, city attorney and mayor have approved the relinquishment request.~~

~~D. The retention of the easement no longer serves any useful public purpose.~~

A. Petitions Authorized. The property owners of an interest in any real estate desiring to vacate a public utility easement upon their property, or any part thereof, may petition the City Council to make such vacation. A vacation may also be initiated by the City Council, upon the adoption of a resolution imitating procedures which shall contain a legal description and vicinity map exhibit of the subject public utility easement sought to be vacated, prepared by a Washington state-licensed surveyor.

B. Elements of Petition. A vacation petition initiated by property owners shall include the following:

1. A vacation petition with supporting affidavits on forms provided by the Community Development Department.

2. A legal description and vicinity map exhibit of the public utility easement to be vacated, prepared by a Washington State-licensed surveyor. Said legal description and exhibit shall be formatted to meet Benton County Auditor's recording standards and requirements.

3. For each petitioner a title insurance company certificate, issued not more than 30 days prior to the petition, showing ownership of the property, all lien holders, and the names and addresses of all property owners upon the public utility easement sought to be vacated.

4. The applicable fee as established by the master fee schedule, which is nonrefundable.

5. The vacation petition shall identify the easement to be relinquished (a copy of the document creating or reserving the easement shall be provided), the property burdened by the easement, the name and contact information of the legal owners of said property, and any known utilities in the easement.

C. Filing of Petition. The petition or resolution shall be filed with the City Clerk, and the petition shall be signed by the owners of more than two-thirds of the property upon or included within the part of such public utility easement sought to be vacated. For the purpose of determining the sufficiency of signatures of owners of private property on the application or consent to vacate as determined by the city, the following rules shall govern:

1. The signature of the owner of the property as set forth in the Benton County assessor records and confirmed by a title report if required by the community development department;

2. In the case of property subject to a contract of purchase, the signatures of the contract grantor and grantee shall be required;

3. In the case of ownership by 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 bylaws of the resolution, certified by the secretary of the corporation, granting such authority; and

4. 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.

D. City staff review. Upon receipt of a petition, community development staff shall route the application materials to the public works department, as well as Benton County Fire District No. 4 for administrative review. The department shall also forward the application for review by franchise utilities, and request a written response within 15 days. If objections are received, the department shall notify the applicant and it will be applicant's responsibility to obtain a response and/or resolve any objections from each franchise utility. If a response is not provided by a franchise utility, it shall be considered consent to the proposal.

1. Staff may require additional information from the Applicant, including, but not limited to, a survey and locate of existing utilities. If covenants have been recorded against the property that appear to be relevant to the vacation request a legal opinion may be necessary, to be furnished by the applicant at his/ her expense.

2. If the city or any franchise utility or other reviewer listed above identifies that the city or public has a probable future need for the easement, then community development department staff shall issue a written denial of the application. If no probably future need is determined, the Community Development department shall issue a recommendation of approval to the City Council.

E. Council Resolution for Vacation – City Council Action on Resolution or Petition. Upon receipt of a petition for vacation or after the City Council's own motion on its own resolution for vacation and following review by the Community Development department in accordance with WRMC 12.60.010(D), the City Council shall adopt a resolution fixing a time when the petition will be heard and determined, which time shall not be more than 60 days nor less than 20 days after the passage of the resolution. The resolution must also specify if the public utility easement was acquired or established at public expense, and if the easement was acquired at public expense, require an appraisal to ordered, and a deposit to be paid in accordance with WRMC 12.60.015(B).

12.60.015 Fees.

A. Public Utility Easement Vacation Fee. A petition initiated by property owners for the vacation of any public utility easement, or any part thereof, shall be accompanied by an initial nonrefundable payment to the city of a Public Utility Easement Vacation

Fee as set by City Council in the master fee schedule, to defray the administrative costs incurred in processing such vacation petitions.

B. Appraisal Deposit Fee to Be Paid after City Council issues a recommendation for vacation with compensation. At the time the City Council recommends granting a vacation with compensation consistent with WRMC 12.60.050, the petitioner(s) shall deposit a sum as set by City Council in the master fee schedule with the Public Works Director, which shall be the city's estimated cost of the full appraisal. In the event that the appraisal cost is less than the amount deposited, the compensation payable to the city shall be reduced by the difference between the deposit and the actual cost of the appraisal, or, in the alternative, such difference shall be refunded. In the event the cost of the appraisal is more than the amount deposited, the compensation payable to the city shall be increased by the difference between the deposit and the actual cost and paid by the petitioner(s) prior to the approval of the vacation.

12.60.020 Public utility easement relinquishment process. Appraisals.

Requests for easement relinquishments shall be initiated at the community development department. Community development shall route the application materials to all city departments (police, finance and public works), as well as Benton County Fire District No. 4, city attorney and mayor. Once a recommendation is obtained from each department, the easement relinquishment application will then be provided to the city council at the next available city council meeting. The city council shall determine whether or not the relinquishment shall occur and, if so, shall direct the mayor to sign the relinquishment form. Once signed by the mayor, the relinquishment form will then be given back to the applicant for recording at Benton County. Four copies of the recorded document shall be returned back to community development within 30 days of issuance or else the easement relinquishment becomes null and void. Copies shall be provided to the city clerk, public works department and two copies at community development (one copy retained within the easement relinquishment file and one copy within the property address file).

The Public Works Director is authorized to obtain appraisals from qualified, independent appraisers of public utility easements as are recommended for vacation, following the public hearing by the City Council.

12.60.025 Notice of public hearing.

A. Notice to Be Provided. Upon the passage of the resolution passed per 12.60.010(E), the city clerk shall give 20 days' notice of the pendency of the petition by a written notice posted in three of the most public places in the city, and like notice in a conspicuous place on or near the location of the easement sought to be vacated.

B. Elements of Notice. The said notice shall contain a statement that a petition has been filed to vacate the public utility easement described in the notice, together with a statement of the time and place fixed for the public hearing of the petition. The notice will state that the City Council shall hold a public hearing on the proposed vacation in the manner required in this chapter and that anyone objecting to the proposed vacation should attend the public hearing or send a letter to the City Clerk indicating his or her objection prior to the public hearing date. A similar notice shall also be sent to the record owners or reputed owners of all lots, tracts or parcels of

land or other property abutting upon any easement or portion thereof sought to be vacated / relinquished, as shown on the rolls of the county treasurer.

C. Notice Where Council Initiates Vacation by Resolution. In all cases where the proceeding is initiated by resolution of the City Council without a petition having been signed by the owners of more than two-thirds of the property abutting upon the part of the public utility easement sought to be vacated, in addition to the notice hereinabove required, there shall be given by mail at least 15 days before the date fixed for the public hearing, a similar notice to the record owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street, alley, road right-of-way or access easement or portion thereof sought to be vacated, as shown on the rolls of the county treasurer.

12.60.030 Public access easement relinquishment process.—**Protest.**

Requests for easement relinquishments shall be initiated at the community development department. Community development shall route the application materials to all city departments (police, finance and public works), as well as Benton County Fire District No. 4, city attorney and mayor. Once a recommendation is obtained from each department, the easement relinquishment application will then be provided to the city council at the next available city council meeting. The city council shall determine whether or not the relinquishment shall occur and, if so, shall direct the mayor to sign the relinquishment form. Once signed by the mayor, the relinquishment form will then be given back to the applicant for recording at Benton County. Four copies of the recorded document shall be returned back to community development within 30 days of issuance or else the easement relinquishment becomes null and void. Copies shall be provided to the city clerk, public works department and two copies at community development (one copy retained within the easement relinquishment file and one copy within the property address file).

If 50 percent of the abutting property owners file written objections to a council-initiated vacation petition with the City Clerk prior to the time of the hearing, the city shall be prohibited from proceeding with the vacation.

12.60.040 Public hearing and criteria.

A public hearing on such petition may be held before the City Council upon the date fixed by resolution or at the time said public hearing may be adjourned to. Following the public hearing, the City Council shall consider the request in accordance with state and local law. To approve a vacation, the council must find that the public utility easement no longer serves any useful public purpose, not is it likely to in the future, such vacation would not unduly jeopardize the health, safety, welfare, or public good, applicable legal requirements have been met, and any other fact or issue it deems relevant. The City Council may grant the petition to vacate the public utility easement or any part thereof by resolution, with or without conditions, or the City Council may deny the petition.

12.60.050 Compensation for vacation.

A. Payment for Vacation. Resolutions vacating any public utility easement shall not be passed by the City Council until the owners of the property abutting such easement so vacated shall compensate the city in the amount required by this subsection.

1. For those public utility easements that were not acquired or established at public expense, and that are not needed for public use either now or in the foreseeable future, the City Council may pass a vacation resolution to vacate the easement without requiring the abutting property owners make payment to the City for such vacation.

2. Alternatively, when a public utility easement was acquired or established at public expense, City Council may require the property owners to compensate the city in an amount up to one-half of the fair market value, as shown in the appraisal, of any public utility easements that have been dedicated for less than 25 years. City Council may require the property owners to compensate the city in an amount up to the full fair market value, as shown in the appraisal, of the area vacated for streets, alleys, road rights-of-way and access easements that have been dedicated for more than 25 years.

B. In-Lieu Transfers of Property. Conveyance of other property or easement acceptable to the city may be made in lieu of the payment required by subsection A of this section, whether required to mitigate adverse impacts of the vacation or otherwise. The full appraised value of the land conveyed shall be credited to the required payment.

When the value of the in-lieu parcel is less than the payment required by subsection A of this section, the petitioner shall pay the difference to the city. When the value of the in-lieu parcel exceeds the payment required by subsection A of this section, the city shall pay the difference to the petitioner.

12.60.055 Payment of compensation or conveyance.

Upon securing the appraisal of the value public utility easement to be vacated as provided in this chapter, the Public Works Director shall notify the petitioner of the amount of compensation, deducting or adding therefrom any remaining appraisal fee balance not previously refunded to or collected from the petitioner. The payment shall be delivered to the Public Works Director, who, upon receipt of any such payment, shall forthwith transmit the same to the Finance Director for deposit. Revenue received by the city as compensation for public utility easements vacated shall be deposited into the city's transportation improvement program fund to be used on transportation capital projects within the city. In the event that the petitioner has received approval of delivery of an instrument granting or dedicating to the city a parcel(s) of land in lieu of a cash payment as contemplated by WRMC 12.60.050(B), the Public Works Director, at the petitioner's expense, shall obtain a policy of title insurance insuring title thereto in the city.

12.60.060 Posting and mailing notices – Recording resolution.

Posting and mailing of the notices provided for in this chapter shall be the responsibility of the City Clerk. A certified copy of the resolution vacating a public utility easement, or any portion thereof, shall be provided to the petitioner and, as required by RCW 35.79.030, recorded by the petitioner (or the city clerk, if the city is the proponent) at the office of the Benton County Auditor, at the petitioner's expense.