

ORDINANCE NO. _____

**ORDINANCE AMENDING WHATCOM COUNTY CODE 12.20 ROAD VACATIONS TO
UPDATE PROCEDURES FOR PROCESSING PETITIONS**

WHEREAS, the Revised Code of Washington Chapter 36.82 authorizes the Whatcom County Council to receive compensation for the vacation of county roads; and

WHEREAS, on November 23, 1993, Council adopted Ordinance 1993-080 to replace fees listed with a reference to the fee set forth in the Whatcom County Unified Fee Schedule and replace the term "board" or "commission" with the term "Council"; and

WHEREAS, on October 11, 1994, Council adopted Ordinance 1994-059 to streamline the road vacation petition, review, and approval/denial processes; and

WHEREAS, the County Council wishes to amend WCC Chapter 12.20 to better align the processing of road vacation petitions with the general operations of the Public Works Department and County Council Office and provide better service to petitioners.

NOW, THEREFORE, BE IT ORDAINED that the Whatcom County Council adopts the above "WHEREAS" recitals as finding of fact in support of its action; and

BE IT FINALLY ORDAINED by the Whatcom County Council that the Whatcom County Code 12.20 is hereby amended as described in Exhibit A.

ADOPTED this ____ day of _____, 2021.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis, Clerk of the Council

Barry Buchanan, Council Chair

APPROVED AS TO FORM:

**WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON**
() Approved () Denied

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 9/28/2021)

Satpal Sidhu, County Executive
Date Signed: _____

EXHIBIT A

Chapter 12.20 ROAD VACATIONS

Sections:

- 12.20.010 Authority.
- 12.20.020 Scope and application.
- 12.20.030 Petition – Fees.
- 12.20.040 Petition – Format.
- 12.20.050 Engineer’s report and resolutions.

12.20.010 Authority.

This chapter is enacted pursuant to authority contained in RCW 36.87.120. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.010).

12.20.020 Scope and application.

This chapter shall apply to all petitions to the Whatcom County council seeking vacation and abandonment of a Whatcom County road, or any portion thereof, initiated pursuant to Chapters 36.87 and 58.17 RCW. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.020).

12.20.030 Petition – Fees.

A. Every petition to the Whatcom County council for vacation and/or abandonment of any road or portion thereof shall conform to the requirements of the applicable state statute and shall be accompanied by a petition fee as set forth in the Whatcom County Unified Fee Schedule.

B. The petition form, along with the petition fee shall be submitted to the Whatcom County public works department.

C. The portion of the petition fee designated for recording the final order of vacation may be reimbursed to the petitioner if the council denies the petition.

12.20.040 Petition – Format.

A. Property owners of the majority of the frontage on any county road or portion thereof may petition the council to vacate and abandon that same county road or portion thereof by submitting a vacation petition to the Whatcom County public works department.

B. The petition must be signed by each petitioner and include the name, address and land owned for each petitioner and set forth that the right of way is useless as part of the county road system and that the public will be benefited by its vacation.

C. The petition must include a legal description of the right of way proposed to be vacated including the square footage of the area of vacation. The county engineer may require a drawing prepared by a surveyor licensed by the State of Washington.

D. As part of the public notification process the petitioner shall include in the petition the names, signatures and addresses of five persons who own property within a one-mile radius

1 of the road to be vacated. If the petitioner can demonstrate to the Whatcom County public
2 works department that fewer than five people own property within a one-mile radius of the
3 road to be vacated then the petitioner shall submit with the petition an affidavit stating the
4 same, in addition to the names, signatures and addresses of those people who do own
5 property within a one-mile radius of the road to be vacated.
6

7 E. By signing the petition, the notified property owners are only acknowledging that they
8 received notice of the petitioner's intent to seek vacation of the county road or portion
9 thereof. Notified property owners are not agreeing to become co-petitioners for the road
10 vacation. (Ord. 94-059 Exh. A)
11

12 12.20.050 Engineer's report and resolutions.

13 A. The county engineer shall examine the petition for completeness and prepare a
14 resolution for council to consider vacating the road. If the Whatcom County council
15 approves the resolution to consider vacating the road it will direct the county engineer to
16 prepare an engineer's report. If the Whatcom County council does not approve the
17 resolution to consider vacating the road the petition to vacate the road shall be deemed to
18 have been denied.
19

20 B. The county engineer shall investigate and prepare the engineer's report on the petition.
21 The engineer is authorized and directed to review each vacation and recommend the
22 compensation amount for the vacation based on current market data. If necessary, the
23 county will contract for a full appraisal, and the petitioner will be responsible for the costs.
24

25 C. Upon completion of the report, the county engineer will prepare a resolution to vacate.
26 In addition to the requirements of RCW 36.87.040, the resolution shall contain the following
27 information:
28

29 1. The petitioner's name, the date the petition was filed with the public works
30 department, a statement that the application and report fee has been paid, and a
31 short description of the roads or portion of roads to be vacated;
32

33 2. A legal description of the roads or portions thereof to be vacated;
34

35 3. A statement that the applicant has six calendar months from the date the
36 resolution is passed to pay any remaining fees to the Whatcom County public works
37 department, with checks made payable to the Whatcom County treasurer, prior to
38 the vacation becoming effective, including but not limited to the compensation
39 amount of the area sought to be vacated;
40

41 4. A statement that the petitioner has met all of the petition requirements as set
42 forth by this chapter, and by all other applicable laws;
43

44 5. The compensation amount of the area sought to be vacated as determined by the
45 county engineer;
46

1 6. The classification of the road area and the nature of the county's interest therein,
2 according to the following classification:
3

4 Class A. Public expenditure made,

5 Class B. No public expenditures made or nonascertainable from records,

6 Class 1. No part thereof lies in any plat,

7 Class 2. Part or all lies within a platted subdivision,

8 Class 3. Did not remain unopened for public use for a period of five years after the
9 authority was granted for opening it,

10 Class 4. Remained unopened for public use for five or more years after the order
11 made or authority granted for opening it,

12 Class 5. Is contained within that portion of a plat which is to be replatted,

13 Class 6. Abandoned in fact due to relocation of right-of-way,

14 Class 7. Informalities exist in the records of title which are construed to invalidate
15 and divest the public of any right, title or interest in the right-of-way.
16

17 7. A statement that the vacation does not become effective until the fees are paid,
18 and the final order and the resolution are recorded with the county auditor. (Ord. 94-
19 059 Exh. A; Ord. 93-080 Exh. P; prior code § 7.40.060).
20

21 D. The clerk of the council will schedule a public hearing on the resolution to vacate. The
22 county engineer will provide public notice in accordance with Chapter 36.87 RCW.
23

24 E. After the public hearing, the Whatcom County council shall consider the resolution to
25 vacate. Action on the resolution will be the Council's final action in the matter.
26

27 F. The petition shall be deemed to have been denied if a motion to approve the resolution
28 fails, or if by other means a majority of the council denies approval of the resolution .
29

30 G. If the Whatcom County council passes the resolution to vacate, the county engineer, or
31 the county engineer's designee, will prepare a preliminary order of vacation. If the
32 approved resolution contains a provision seeking or requiring payment of further costs
33 beyond those covered by the petition fee or the value of the area being vacated, the county
34 engineer shall notify the applicant that they have six calendar months in which to pay such
35 costs. At the time of the hearing the Whatcom County council may waive payment of the
36 appraised value, or any portion thereof, if it finds that the granting of such vacation will be
37 of some benefit to Whatcom County. Said waiver shall be included as part of the resolution
38 approving of the vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-15 § 1; prior
39 code § 7.40.070).
40

41 H. If the petitioner submits the total amount owed to the county within the six calendar
42 months after the date of passage of the resolution, or if upon passage the resolution no
43 money is owed, the county engineer shall prepare a final order of vacation and shall cause
44 it, along with the resolution, to be recorded by the Whatcom County Auditor. If the
45 petitioner fails to make payment as required, the Council's authorization of the vacation
46 becomes null and void.
47

- 1 I. The vacation becomes official only after a final order of vacation and the resolution to
- 2 vacate are recorded by the county auditor. (Ord. 94-059 Exh. A)