

PROPOSED BY: PUBLIC WORKS  
INTRODUCTION DATE: \_\_\_\_\_

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.
- ~~12.20.060 Resolution requirements.~~
- ~~12.20.070 Payment of costs when.~~

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 applications~~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 appraisal fee ~~and application fee~~ as set forth in the Whatcom County Unified Fee Schedule.

B. The petition form, along with the petition~~full fees for application and appraisal~~ shall be submitted to the Whatcom County public works department.

~~C. The appraisal fee may be refunded by the council at the recommendation of the county engineer if no appraisal has been carried out in connection with the road vacation petition. Said refund may be given only after the council makes its final decision in connection with the road vacation petition in question.~~

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

~~E. A portion of the application fee, but no more than 30 percent of that application fee, may be reimbursed to the petitioner by the council at the time the application is approved, if the vacation was granted pursuant to the Territorial Land Act of 1890. (Ord. 94-059 Exh. A; Ord 93-080 Exh. P; prior code § 7.40.030).~~

12.20.040 Petition – Format.

1 A. ~~Property Owners~~ of the majority of the frontage on any county road or portion thereof  
2 may petition the council to vacate and abandon for the vacation and/or abandonment of  
3 that same county road or portion thereof by submitting a vacation petition to the Whatcom  
4 County public works department, completing a form prepared by Whatcom County.  
5  
6 B. The petition must be signed by each petitioner and include the name, address and land  
7 owned for each petitioner and set forth that the right of way is useless as part of the county  
8 road system and that the public will be benefited by its vacation.  
9  
10 C. The petition must include a legal description of the right of way proposed to be vacated  
11 including the square footage of the area of vacation. The county engineer may require a  
12 drawing prepared by a surveyor licensed by the State of Washington.  
13  
14 ~~DB. As part of the public notification process, included on the petition and submitted by~~ the  
15 petitioner shall include in the petition be the names, signatures and addresses of five  
16 persons who owning property within a one-mile radius of the road to be vacated, ~~as part of~~  
17 ~~the public notification process, unless~~ if the petitioner can demonstrate to the Whatcom  
18 County public works the transportation department that fewer than five people own  
19 property within a one-mile radius of the road to be vacated then, ~~in which case~~ the  
20 petitioner shall submit with the petition an affidavit stating the same, in addition to the  
21 ~~names along with the,~~ signatures and addresses of ~~as those many~~ people who do own  
22 property within a one-mile radius of the road to be vacated.  
23  
24 ~~EG.~~ By signing the petition, the notified property owners are only acknowledging that they  
25 ~~are received notified notice~~ of the petitioner's intent to seek vacation of the county road or  
26 portion thereof. Notified property owners ~~They~~ are not agreeing to become co-petitioners for  
27 the road vacation. (Ord. 94-059 Exh. A)  
28  
29 12.20.050 Engineer's report and resolutions.  
30 A. The county ~~road~~ engineer shall examine ~~and, if necessary, perform an appraisal of the~~  
31 ~~road proposed to be vacated; the engineer shall perfect the legal description of the road~~  
32 ~~proposed to be vacated, and report upon such vacation and abandonment to the Whatcom~~  
33 ~~County council. Said report shall be in the form of a resolution by which the Whatcom~~  
34 ~~County council either authorizes or denies the petition to vacate the county road. the~~  
35 petition for completeness and prepare a resolution for council to consider vacating the road.  
36 If the Whatcom County council approves the resolution to consider vacating the road it will  
37 direct the county engineer to prepare an engineer's report. If the Whatcom County council  
38 does not approve the resolution to consider vacating the road the petition to vacate the  
39 road shall be deemed to have been denied.  
40  
41 B. The county engineer shall investigate and prepare the engineer's report on the petition.  
42 The engineer is authorized and directed to review each vacation and recommend the  
43 compensation amount for the vacation based on current market data. If necessary, the  
44 county will contract for a full appraisal, and the petitioner will be responsible for the costs.  
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46 C. Upon completion of the report, the county engineer will prepare a shall file the petition  
47 and resolution to vacate, with the Whatcom County council upon completion of his/her

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report. In addition to the requirements of RCW 36.87.040, the resolution shall contain the following information:

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

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

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

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

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

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

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Class A. Public expenditure made.

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

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Class 1. No part thereof lies in any plat.

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

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

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

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

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

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

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

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1 D. The clerk of the council will schedule a public hearing on the resolution to vacate. The  
2 county engineer will after its arrival in the council office, with provide public notice to be  
3 given as provided in accordance with Chapter 36.87 RCW.

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5 E. After the public hearing, The Whatcom County council shall consider the resolution to  
6 vacate petition in resolution form. Action on the resolution will be the eCouncil's final action  
7 in the matter.

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9 F. The petition shall be deemed to have been denied if a motion to approve of the  
10 resolution fails, or if by other means a majority of the council denies approval of the  
11 resolution or petition. If the engineer recommends, by resolution, that a petition be denied  
12 and the council disagrees with the engineer's recommendation to deny, the council may  
13 amend the resolution to indicated that it is approving of the petition despite the engineer's  
14 recommendation.

15  
16 G. If the Whatcom County council passes the resolution to vacate, the county engineer, or  
17 the county engineer's designee, will prepare a preliminary order of vacation. If the  
18 approved resolution contains and there is a provision seeking or requiring payment by the  
19 applicant of further costs beyond those covered by the petition fee or appraised the value of  
20 the area being vacated, the county engineer, clerk of the council shall notify the applicant  
21 that they/he/she has yes six calendar months in which to pay for such costs. At the time of  
22 the hearing the Whatcom County council may waive payment of the appraised value, or any  
23 portion thereof, if it finds that the granting of such vacation will be of some benefit to  
24 Whatcom County. Said waiver shall be included as part of the resolution approving of the  
25 vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-15 § 1; prior code §  
26 7.40.070).

27  
28 H. If the petitioner applicant payssubmits the total amount such money as is owed to the  
29 county within the six calendar months after the date of passage of the resolution, or if upon  
30 passage the resolution no money is owed the county by the petitioner, the county  
31 engineer, clerk of the council shall prepare a final an-order of vacation and shall cause have  
32 it, along with the resolution, to be recorded by the Whatcom eCounty Auditor. If the  
33 petitioner applicant fails to make a-payment as required, the Council's authorization of the  
34 vacation becomes null and void.

35  
36 I. The vacation becomes official only after a final order of vacation and the resolution to  
37 vacate are recorded by the county auditor. (Ord. 94-059 Exh. A)

38  
39 ~~12.20.060 Resolution requirements.~~

40 ~~The resolution shall contain the following information, in addition to the requirements of~~  
41 ~~RCW 36.87.040:~~

42  
43 ~~A. The petitioner's name and mailing address, the date the petition was filed with the~~  
44 ~~transportation department, a statement that the application and report fee has been paid,~~  
45 ~~and a short description of the roads or portion of roads to be vacated;~~

46  
47 ~~B. A legal description of the roads or portions thereof to be vacated;~~

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2 ~~C. A statement that the applicant has six calendar months from the date the resolution is~~  
3 ~~passed to pay any remaining fees to the Whatcom County council office, with checks made~~  
4 ~~payable to the Whatcom County treasurer, prior to the vacation becoming effective,~~  
5 ~~including but not limited to the appraised value of the area sought to be vacated;~~  
6  
7 ~~D. A statement that the petitioner has met all of the petition requirements as set forth by~~  
8 ~~this chapter, and by all other applicable laws;~~  
9  
10 ~~E. The fair market value of the area sought to be vacated as determined by appraisal;~~  
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12 ~~F. The classification of the road area and the nature of the county's interest therein,~~  
13 ~~according to the following classification:~~  
14  
15 ~~1. Class A. Public expenditure made,~~  
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17 ~~2. Class B. No public expenditures made or nonascertainable from records,~~  
18  
19 ~~3. Class 1. No part thereof lies in any plat,~~  
20  
21 ~~4. Class 2. Part or all lies within a platted subdivision,~~  
22  
23 ~~5. Class 3. Did not remain unopened for public use for a period of five years after the~~  
24 ~~authority was granted for opening it,~~  
25  
26 ~~6. Class 4. Remained unopened for public use for five or more years after the order made or~~  
27 ~~authority granted for opening it,~~  
28  
29 ~~7. Class 5. Is contained within that portion of a plat which is to be replatted,~~  
30  
31 ~~8. Class 6. Abandoned in fact due to relocation of right-of-way,~~  
32  
33 ~~9. Class 7. Informalities exist in the records of title which are construed to invalidate and~~  
34 ~~divest the public of any right, title or interest in the right-of-way.~~  
35  
36 ~~G. A statement that the vacation does not become effective until the fees are paid, and the~~  
37 ~~final order and the resolution are recorded with the county auditor. (Ord. 94-059-Ex. A;~~  
38 ~~Ord. 93-080-Ex. P; prior code § 7.40.060).~~  
39  
40 ~~12.20.070 Payment of costs when:~~  
41 ~~Recompense in the amount of the appraised value and all certified costs and expenses~~  
42 ~~incurred in the proceedings above and beyond those covered by the application and~~  
43 ~~appraisal fee shall be tendered within six months of the hearing on the petition for vacation;~~  
44 ~~provided, however, that at the time of the hearing the county council may waive payment of~~  
45 ~~the appraised value, or any portion thereof, if it finds that the granting of such vacation will~~  
46 ~~be of some specific benefit to Whatcom County. Said waiver shall be included as a part of~~

1 ~~the resolution approving of the vacation. (Ord. 94-059 Exh. A; Ord. 93-080 Exh. P; Ord. 80-~~  
2 ~~15 § 1; prior code § 7.40.070).~~  
3

