



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2021-572

File ID:	AB2021-572	Version:	1	Status:	Adopted
File Created:	09/24/2021	Entered by:	AHester@co.whatcom.wa.us		
Department:	Public Works Department	File Type:	Ordinance Requiring a Public Hearing		
Assigned to:	Council	Final Action:	10/26/2021		
Agenda Date:	10/26/2021	Enactment #:	ORD 2021-065		

Primary Contact Email: sdraper@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Ordinance amending Whatcom County Code 12.20 Road Vacations to update procedures for processing petitions

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Whatcom County Code 12.20 and RCW 36.87 provide for the procedures for approving road vacations. The code amendment will better align the processing of road vacation petitions and provide better service to petitioners. The code changes will clarify and correct outdated sections of the code

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
10/12/2021	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 7	Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
		Nay: 0	
		Absent: 0	
10/26/2021	Council	ADOPTED	
		Aye: 7	Browne, Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner
		Nay: 0	
		Absent: 0	

Attachments: Staff memo, Proposed ordinance (clean), Proposed ordinance (redline)

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: _____

1
2
3
4
5 **EXHIBIT A**

6 Chapter 12.20 ROAD VACATIONS

7 Sections:

- 8
9 12.20.010 Authority.
10 12.20.020 Scope and application.
11 12.20.030 Petition - Fees.
12 12.20.040 Petition - Format.
13 12.20.050 Engineer's report and resolutions.
14 ~~12.20.060 Resolution requirements.~~
15 ~~12.20.070 Payment of costs when.~~
16

17 12.20.010 Authority.

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

20
21 12.20.020 Scope and application.

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

26
27 12.20.030 Petition - Fees.

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

32
33 B. The petition form, along with the petition full fees for application and appraisal shall be
34 submitted to the Whatcom County public works department.

35
36 ~~C. The appraisal fee may be refunded by the council at the recommendation of the county~~
37 ~~engineer if no appraisal has been carried out in connection with the road vacation petition.~~
38 ~~Said refund may be given only after the council makes its final decision in connection with~~
39 ~~the road vacation petition in question.~~

40
41 C.D. The portion of the petition application fee designated for recording the final order of
42 vacation may be reimbursed to the petitioner if the council denies the petition.

43
44 ~~E. A portion of the application fee, but no more than 30 percent of that application fee, may~~
45 ~~be reimbursed to the petitioner by the council at the time the application is approved, if the~~
46 ~~vacation was granted pursuant to the Territorial Land Act of 1890. (Ord. 94-059 Exh. A;~~
47 ~~Ord. 93-080 Exh. P; prior code § 7.40.030).~~

48 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 as 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.
45

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

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

3
4 1. The petitioner's name, the date the petition was filed with the public works
5 department, a statement that the application and report fee has been paid, and a
6 short description of the roads or portion of roads to be vacated;

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7
8 2. A legal description of the roads or portions thereof to be vacated;

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9
10 3. A statement that the applicant has six calendar months from the date the
11 resolution is passed to pay any remaining fees to the Whatcom County public works
12 department, with checks made payable to the Whatcom County treasurer, prior to
13 the vacation becoming effective, including but not limited to the compensation
14 amount of the area sought to be vacated;

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15
16 4. A statement that the petitioner has met all of the petition requirements as set
17 forth by this chapter, and by all other applicable laws;

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18
19 5. The compensation amount of the area sought to be vacated as determined by the
20 county engineer;

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21
22 6. The classification of the road area and the nature of the county's interest therein,
23 according to the following classification:

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24
25 Class A. Public expenditure made,

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

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

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

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

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

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

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

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

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37
38 7. A statement that the vacation does not become effective until the fees are paid,
39 and the final order and the resolution are recorded with the county auditor. (Ord. 94-
40 059 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.

4
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 ~~c~~Council's final action
7 in the matter.

8
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 indicate 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~~ has 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 pays~~ submits 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 ~~c~~County Auditor. If the
33 ~~petitioner applicant~~ fails to make a payment as required, the ~~C~~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;~~

1
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;~~
11

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;~~
16

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-Exh. A;~~
38 ~~Ord. 93-080-Exh. 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