

## STREET VACATION

by

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The general authority for the vacation of public streets is provided in Chapter 35.79 of the Revised Code of Washington. Initiation of proceedings to effect a street vacation may be by petition by and on behalf of abutting owners or the legislative body of the city may initiate by resolution. RCW 35.79.010. The petition method provides that when the petition is signed by the owners of more than two-thirds of the abutting property the legislative authority, by resolution, shall fix a time for hearing on the petition at a time between twenty days and sixty days of the adoption of the resolution, with twenty days' posted notice of the date of hearing.

Resolutions of the legislative body of the city without petition requires additional notice by mail of fifteen days to all owners or reputed owners of property abutting the street for which vacation is sought. In the event fifty percent of these abutting property owners file written objections prior to the hearing, the city is prohibited from proceeding with the vacation.

The power of the city to vacate as set out in the statutes was explained and refined in Young v. Nichols, 152 Wash. 306, 308 (1929), where the court said:

The power of a city, in this state at least, to vacate such of its streets or parts of its streets as it chooses, is unquestioned. To illustrate, it may change a street from its use as a highway to a use for another public purpose, when it is determined that the change will better serve the public good; it may vacate a street when it is no longer required for public use, or when its use as a street is of such little public benefit as not to justify the cost of maintaining it; or when it is desired to substitute a new and different way more useful to the public; and, of course, it is within the power of a city to vacate a street where all of the property owners adversely affected consent to the vacation. But in all instances, the order of vacation must have within it some element of public use, and even where the order serves a public use, it cannot be exercised against the will of abutting property owners adversely affected, unless the damages they suffer thereby are in some way compensated. (Italics [emphasis] ours.)

The requirement of some element of "public use" was extended to "public benefit" in Banchero v. City Council, 2 Wn. App. 519, 523 (1970):

It is suggested that one challenging a street vacation on the ground that it is not for a public use need not be an abutting property owner. If the vacation does not benefit the public, the public is the injured party, and any member of the public may seek redress. (Emphasis added.)

### Nature of Vacation

It has long been the rule in Washington state that vacation is a legislative matter, as is set out in Kakeldy v. Columbia & P.S.R. Co., 37 Wash. 675 (1905):

The question whether the street should be vacated or not was one for legislative decision, resting with the city council, and, unless that discretion was abused, the courts will not interfere.

This rule was affirmed in Hoskins v. Kirkland, 7 Wn. App. 937 (1972).

### Public Use as Benefit

We have seen that some element of public use or benefit is required. Some of these are:

- (1) Income to city. RCW 35.79.030
- (2) Return of property to tax rolls.
- (3) Private maintenance.
- (4) Freeing the city from potential liability from conditions that may be allowed to arise in the dedicated right-of-way. Thomas v. Jultak, Wyoming, 231 P.2d 974 (1951). (Potential liability - see Boeing v. State, 89 Wn.2d 443, and Ochampaugh v. Seattle, 91 Wn.2d 514.)

In Banchero v. City Council, *supra*, the question of private benefit to one party was raised. The court considered such diverse public interests as Seattle's need of dairy products, the payroll contribution to the city's economy and property taxes. The court also stated:

The legislature or, in this case, the city council, is the proper body to weigh the benefit to the public. Only where there is no possible benefit to the public will this court review the legislative determination.

### Standing to Contest Vacation

The general rule is that only abutting property owners or those whose reasonable means of access have been obstructed may contest a vacation. In Capitol Hill Methodist Church v. Seattle, 52 Wn.2d 359, 366:

It must be borne in mind that the appellants in this case are not abutting owners of property on the portion of street vacated by the City of Seattle. To maintain this action, their right of access must be "destroyed or substantially affected," or, to put it another way,

their reasonable means of access must be obstructed, and they must suffer a special damage, different in kind and not merely degree, from that sustained by the general public . . .

In Fry v. O'Leary, 141 Wash. 465 (1927), vacation of a strip of land thirteen feet in width on the south side of a sixty-foot street was sought and contested by owners whose property abutted the street on the north side. The court held:

. . . one who is an abutting property owner upon a street or alley, any portion of the whole of which is sought to be vacated, has a special right and a vested interest in the right to use the whole of the street for ingress and egress, light, view and air, and, if any damages are suffered by such an owner, compensation is recoverable therefor.

And, in Brazelle v. Seattle, 55 Wash. 180, 188 (1909), "Abutting owners who are deprived of the right to enjoy the street to its full width immediately in front of their property, being specially injured, are entitled to equitable relief by injunction."

#### Title to Vacated Streets

The statutes, RCW 35.79.040 and .050, set out the general rules as to ownership of vacated streets. RCW 35.79.040 provides that one-half goes to each abutting owner, whereas RCW 35.79.050 declares that "no vested rights shall be affected by the provisions of this chapter."

In Bradley v. Spokane & Inland Empire R. Co., 79 Wash. 455 (1914), the court, in considering language of dedication in a plat, held that ". . . it is now the settled rule of this state that the public has only an easement of use in a public street or highway, and that the fee rests in the owners of the abutting property." Puget Sound Alumni Kappa Sigma v. Seattle, 70 Wn.2d 222 (1967), reiterated the rule that vacated streets "shall belong to the abutting property owners."

In Michelson Bros., Inc. v. Bademan, 4 Wn. App. 624 (1971), the court referred to the Kappa Sigma case but held that the application of the rule was dependent upon the "particular circumstances" of each case, citing Rowe v. James, 71 Wash. 267 (1912).

The court in London v. Seattle, 93 Wn.2d 657, 666 (1980), stated this general rule, and stated further that the rule was based upon the presumption that the abutters or their predecessors, prior to dedicating the land for street purposes, originally owned the underlying fee to the center of the street. Therefore, since the dedication was by the owner of the property dedicated for the public street, but was not by the abutting owner, the title of the street was vested in the dedicator who, upon vacation, took the entire property to the exclusion of the owner of the abutting property.

VACATION ORDINANCE/PETITION--FORM  
[W/EASEMENT PARAGRAPH]

ORDINANCE NO. C \_\_\_\_\_

An ordinance vacating [1].

WHEREAS, A petition for the vacation of [1] has been filed with the City Clerk, representing [2]% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, The City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That [1] is hereby vacated.

Section 2. That this ordinance shall not become effective until the owners of property abutting upon the area to be vacated shall have compensated the City of Spokane in an amount equal to one-half (1/2) the appraised value of the area herein vacated.

[3] [Any add'l paragraph]

[4]Section 3. An easement is reserved and retained over and through [the entire vacated area] [each of the vacated areas] for utility services of [U.S. West Telephone Company, Washington Water Power Company, Cox Cable Spokane and the City of Spokane], and no building or other structure shall be erected or placed thereon without the prior written approval of the Director of Public Works.

Passed the City Council \_\_\_\_\_, 1989.

\_\_\_\_\_  
M A Y O R

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

VACATION ORDINANCE/PETITION FORM

ORDINANCE NO. C \_\_\_\_\_

An ordinance vacating [1].

WHEREAS, A petition for the vacation of [1] has been filed with the City Clerk, representing [2]% of the abutting property owners, and a hearing has been held on this petition before the City Council as provided by RCW 35.79; and

WHEREAS, The City Council has found that the public use, benefit and welfare will best be served by the vacation of said public way; -- NOW, THEREFORE,

The City of Spokane does ordain:

Section 1. That [1] is hereby vacated.

Section 2. That this ordinance shall not become effective until the owners of property abutting upon the area to be vacated shall have compensated the City of Spokane in an amount equal to one-half (1/2) the appraised value of the area herein vacated.

[3] [Any add'l paragraph]

[4]Section .

Passed the City Council \_\_\_\_\_, 1989.

\_\_\_\_\_  
M A Y O R

Attest: \_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

R E S O L U T I O N

WHEREAS, At its Legislative Session, held on [1], 19.., the Spokane City Council held hearing on the vacation petition of [2] for the vacation of the [3], in the City of Spokane; and

WHEREAS, It was determined that there is an insufficient number of abutting property owners in favor of the subject vacation to make this a valid petition; and

WHEREAS, The City of Spokane is an owner of property abutting the above-described alley and street proposed for vacation; -- NOW, THEREFORE,

THE SPOKANE CITY COUNCIL DOES HEREBY RESOLVE to initiate this subject vacation by Resolution;

FURTHER, that hearing date on this vacation hereby initiated by this Resolution be set for [4], 19.., and the City Clerk of the City of Spokane be instructed to proceed with all proper notices, according to state law.

ADOPTED by the City Council \_\_\_\_\_.

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

Clerk's File No. \_\_\_\_\_

N O T I C E

RESOLUTION FOR VACATION

NOTICE IS HEREBY GIVEN that a resolution has been passed by the City Council of the City of Spokane, Washington, on [1], 19.., in the matter of the vacation of the [3], in the City of Spokane, Spokane County, Washington.

FURTHER NOTICE IS HEREBY GIVEN that the said City Council has set the time and place for hearing on said vacation for the [4] day of [4], 19.., at 7:00 p.m., in the Council Chambers, Lower Level, City Hall, W. 808 Spokane Falls Boulevard, Spokane, Washington, at which time any person interested may appear and be heard in said matter.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19...

\_\_\_\_\_  
City Clerk  
City of Spokane, Washington

# CITY OF SPOKANE

## STREET VACATION POLICY

A petition, in the form of a letter, requesting the vacation of a street, alley, or other public right of way, signed by the owners of preferably 100%, but to exceed 66-2/3%, of the abutting property, and a \$200.00 fee, shall be filed with the Department of Public Works.

The petition must state:

1. The limits of the proposed vacation.
2. The reasons for vacation.
3. The public benefits derived from the vacation.

The Department of Public Works will send copies of the petition to all effected City Departments and private utilities and will review the vacation proposal.

The City Council will, by resolution, set a date of hearing and order notices to be posted on the site of the proposed vacation.

The Public Works Department will consolidate the reports and make a recommendation to the City Council which will contain requirements such as, drainage, street closure, and necessary easements.

If the City Council approves the vacation at the hearing, an ordinance setting the terms and conditions for the vacation will be submitted for first reading. The final reading will be withheld until all requirements are met.

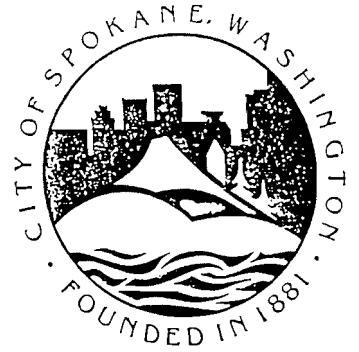
The ordinance may provide that the City retain easements or the right to grant easements in respect to the vacated land for the construction, repair, and maintenance of public and private utilities and services.

The City will charge one-half of appraised valuation for vacated land as defined by the latest information from the County Assessor's Office on the adjoining land.

Any further questions regarding vacations of public right of way may be referred to the Department of Public Works, Skywalk Level Municipal Building, West 808 Spokane Falls Boulevard, Spokane, WA 99201-33343, telephone (509) 456-4300.



STREET VACATION PETITION



Date

Mr. Brad W. Blegen, P.E.  
City Engineer  
City of Spokane  
West 808 Spokane Falls Boulevard  
Spokane, WA 99201-3343

Dear Mr. Blegen:

I request the vacation of \_\_\_\_\_ from  
\_\_\_\_\_ to \_\_\_\_\_.

The reasons for the vacation are:

Public benefits to be derived from the vacation are:

Sincerely,

Lot _____ Block _____	_____	_____
	Proponent (Record Owner)	Phone Number
_____	_____	
Addition	Address	
Lot _____ Block _____	_____	_____
	(Record Owner)	Phone Number
_____	_____	
Addition	Address	
Lot _____ Block _____	_____	_____
	(Record Owner)	Phone Number
_____	_____	
Addition	Address	