

CITY OF FEDERAL WAY

**ADMINISTRATIVE
STREET VACATION POLICIES**

PUBLIC WORKS DEPARTMENT

JULY 2020

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INTRODUCTION

The City's existing Right of Way network of improved and unimproved public streets as currently exist and as contemplated in the Comprehensive Plan, City Code, and Development Standards contain the City's vision for the future transportation network to support residents, businesses, commerce, tourism and more.

Right of Way vacations may be initiated in two ways. The first is by a property owner(s) whom desire to acquire the Right of Way adjacent to and abutting their property. This process is called a Right of Way Vacation. To commence a property-owner initiated Right of Way Vacation, the property owner petitions the City in accordance with State law, City Code and this Policy.

The second is City initiated through a resolution. Council may initiate Right of Way vacations by resolution only for a public purpose or when extraordinary circumstances prevent following the petition process. If the Council initiates a petition, all other aspects and procedures of State Law, City Code and these policies still apply.

To grant a Right of Way Vacation, the City is responsible to ensure that the public's interest in the transportation network is protected; approves an associated public benefits proposal; and typically receives the property's fair market value.

These policies guide petitioners, City departments, Boards and Commissions, and the public through the City's process to analyze, review and assess Right of Way vacation petitions. They apply to all Right of Ways whether improved or unimproved.

The City's default position is that unless there are compelling reasons to vacate a Right of Way and it is in the public's benefit to do so; the City will keep it for future public purposes.

PROPERTY OWNER INITIATED RIGHT-OF-WAY VACATIONS IN GENERAL

A Right of Way Vacation is a discretionary legislative act by the City Council that relinquishes the public's right to use the Right of Way. Through a petition, a property owner asks the City, on behalf of the public, to relinquish the public's right to use a street, alley, or other public Right of Way¹ abutting their property. For the purposes of these policies a "Right of Way Vacation" describes vacating any Right of Way over which the public has the right of travel.

These policies use the term "street" to refer to all types of public Right of Way including streets, alleys, boulevards, paths, stairways, and public places, whether improved or unimproved. The Revised Code of Washington (RCW) Chapter 35.79 guides the City's review of Right of Way Vacation petitions. That Chapter assigns responsibility over Right of Way vacation decisions to the Council.

FRAMEWORK FOR DECISION-MAKING

Right of Ways are different and unique from other types of property. When the City grants a Right of Way Vacation, it is relinquishing the public's rights to utilize an area and allowing the abutting property owners to take possession and control of the former Right of Way.

The City holds Right of Ways in trust on behalf of the public, for public use. Relinquishment, and subsequently restricting public movement through the remaining Right of Way is a significant act. For a Right of Way Vacation petition to be approved, the Council shall determine that to do so would significantly serve the public's interest. It is the petitioner's obligation to provide a

¹ "Public right of way" is any property where the City has a right to use the land for street purposes, whether improved or not.

justification for the vacation, information demonstrating there are no feasible alternatives, and ensure that the remaining transportation network is not negatively impacted.

Right of Ways are dedicated in perpetuity for use by the public for travel, transportation of goods, and locating utilities. The dedication carries with it public rights to circulation, access, utilities, light, air, open space, views, free speech, and assembly, and contributes significantly to the form and function of the city. The primary concern of the City in evaluating vacation petitions is to safeguard the public's present and future needs and to act in the public's best interest.

The Council's responsibility is to weigh the public trust and land use effects of a vacation, mitigating measures, and the public benefit provided by the vacation to determine if the vacation is in the public's interest. In balancing these elements of the public interest, the Council places primary importance upon protecting the public trust it holds in the Right of Way.

Guidance of this process is based upon the following:

Public Trust Doctrine: The City is responsible for holding the rights-of-way in public trust. The components of the public trust form the foundation of the City's review of vacation petitions and public benefit proposals.

Public Trust Analysis: Describes the criteria the City uses to determine whether it is appropriate to vacate a Right of Way.

Public Benefit Analysis: Describes the types of public benefits the City expects to see provided in exchange for vacation of a Right of Way.

Process for City Review of Right of Way Vacation Petitions: Describes the process the City utilizes to review Right of Way vacations.

DISTINCTION BETWEEN RIGHT-OF-WAY VACATIONS AND LAND USE DECISIONS

There are no rights under Federal Way Revised Code, the Revised Code of Washington, or elsewhere to acquire or develop within a public Right of Way. To do so, a property owner shall petition for and receive the Council's approval for a Right of Way Vacation. Under State law, the Council may not approve a Right of Way vacation unless it is in the public's best interest. The City uses a two-part test to make this determination.

First, based on materials submitted by the Petitioner, the City performs a "Public Trust Analysis," a determination of whether the Right of Way is needed and whether the public interest can be protected if the Right of Way is vacated. Second, also based on materials submitted by the Petitioner, the City undertakes a "Public Benefit Analysis," assessing the petitioner's proposal to provide benefits to the public.

Established plans, policies, and standards guide this review. The City will not support vacations that conflict with City planning goals. However, land use policies and codes do not bind the Council's decision to grant or deny a Right of Way vacation petition. The Council may condition or deny vacations as it deems necessary to protect the public's interest.

In land use decisions, the Council's role is administrative. The Council sets policies in the form of zoning and land use codes, development standards, and environmental policies and regulations, while the decision authority has been delegated to various staff or the Hearing Examiner.

Under state law, Right of Way Vacation decisions must be made by the Council. The Council cannot delegate that authority. Unless the Council approves a Right of Way vacation, property owners have no right to use or occupy the Right of Way, if not otherwise permitted by the Public Works

Department. The Council typically makes its approval of a vacation conditional on the petitioner meeting a number of requirements.

In addition to reviewing the vacation petition under these policies, a development proposal that requires a vacation may also undergo one or more of the following reviews:

- Land use and zoning review, including review of re-zones;
- Design review and other discretionary land use actions;
- State Environmental Policy Act (SEPA);
- Transportation modal plans;
- Right of Way Permit; or
- Engineering review.

These reviews may result in additional conditions applied in the Right of Way vacation review. Petitioners are required to obtain all necessary land use and building permits before developing the site.

1) PUBLIC TRUST DOCTRINE

City Right of Ways are held in trust for the public, meaning the City is the trustee and guardian of the Right of Way, not an underlying property owner. The Council may approve vacations only when they are in the public's interest. Right of Ways will be retained unless it can be shown that they are not needed for a current or foreseeable public use, there is no negative impacts to the remaining transportation network, and the Council is assured that the vacation is in the public interest. Documentation is required from the Petitioner to demonstrate each of the following areas is maintained with the proposed vacation.

a) CIRCULATION

Right of Ways enable the movement of people, goods, and vehicles through the city as part of a transportation network. If a part of the network is removed, there may be rippling effects throughout. The City will only vacate a Right of Way if doing so does not result in negative effects or displacement of trips onto the remaining network; disrupt the movement of people, goods, and vehicles through the city; and it is consistent with the City's transportation plans.

b) ACCESS

Right of Ways provide access to abutting property from the surrounding community and to the surrounding community from private property. Improved rights-of ways or streets are designed to provide access via a range of transportation modes, including walking, bicycling, riding transit, and driving. The City will only vacate a Right of Way if doing so does not result in negative effects on the current or future needs of the City's vehicular, bicycle, or pedestrian circulation systems, or on access to private property.

c) UTILITIES

City and private utilities use Right of Ways to serve the community and their customers. The City will only vacate a Right of Way when all utilities using or potentially using the Right of Way can be adequately protected with easements, relocations, or utility corridors satisfactory to the utilities' owners. Future potential utilities are required to be accommodated.

d) FREE SPEECH

The public has traditionally had the right and ability to use Right of Ways to exercise constitutional rights under the First Amendment. The City will only vacate a Right of Way when offsetting publicly-accessible spaces on the site will be kept open for the same speech-related purposes.

e) PUBLIC ASSEMBLY

Right of Ways act as places for people to gather, to meet their neighbors, for children to play, and for all segments of society to interact. This role of the Right of Way can be particularly important for people who have the fewest resources. The City will only vacate a Right of Way when the Petitioner demonstrates that the remaining Right of Way network provides the same level of service to the surrounding properties.

f) OPEN SPACE

In addition to providing space for people to gather, interact, and travel, Right of Ways offer open space benefits. This includes space between structures, connections to the community

surroundings, places for trees and vegetation, and contributions to the open space network. The City will only vacate a Right of Way when the Petitioner demonstrates that any development will have a similar resulting function.

g) LIGHT AND AIR

Right of Ways maintain access to light and air to their users and surrounding properties. The City will consider loss of light and air, and shadow impacts in considering whether to approve a Right of Way vacation. Of particular importance are shadow impacts on nearby spaces where public may gather.

h) VIEWS

Right of Ways provide views to mountains, bodies of water, and the city itself. The City will consider feedback from impacted property owners, the impacts on views of and from public places, and views of the natural landscape.

i) LAND USE AND URBAN FORM

The Right of Way plays a significant role in the shape of the city. The City will consider the relationship between the intended character of the area as described in the Comprehensive Plan and adopted neighborhood, subarea, or community plans. The width and spacing of streets, the presence and absence of connector streets, and the location and path of boulevards, pedestrian trails, and other linear open spaces have significant impacts on neighborhoods and how they function. The City will consider impacts that disrupt an existing pattern of development in a neighborhood or area.

2) PUBLIC TRUST ANALYSIS

This section describes the components of the City's analysis in reviewing petitions under the public trust doctrine.

In reviewing a vacation petition, the City evaluates the impacts of a vacation on the public trust, mitigating measures, and public benefits proposed by the petitioner to determine if the vacation is in the public interest. In balancing these elements of the public interest, the City will place primary importance on protecting the public trust.

Right of Ways are dedicated in perpetuity for public travel and the movement of goods. The designation of a Right of Way carries with it rights to circulation, access, utilities, public speech, public use, open space, light, air, views, land use, and urban form. City government acts as the public's trustee in managing the uses within the Right of Way. The City has an interest in protecting the rights of those with the least access to other resources and those most likely to be harmed by development. In that endeavor, the primary concern of the City in vacation decisions is to safeguard the public's present and future needs.

Existing and potential future uses of the Right of Way, whether improved or unimproved, will be identified during the vacation petition review. All or a portion of the Right of Way may be retained for public purposes, including potential future needs that are unknown at the time of review.

The City will consider the impacts of a vacation on the immediately surrounding neighborhood, the broader city and, when appropriate, the region. The larger the project, the more the City's focus will be on broader community impacts, particularly impacts on communities with the least access to opportunity and most likely to experience the negative resulting impacts.

When several vacations are proposed for a particular area of the City by one or multiple petitioners, City staff or Council may request that a comprehensive review be undertaken to determine the cumulative effects of the vacations, particularly on circulation, access, land use and urban form, and impacts to the overall city transportation network. City reviewers shall consider the impacts on the larger transportation system, and impacts on the loss of the Right of Way proposed for vacation.

The requirements for a Right of Way Vacation petition is not limited to documents prepared for other aspects of the project under review. To fully assess the impacts of a vacation on the public trust, City departments, boards and commissions, and the Council may ask petitioners for additional information regarding impacts.

a) CIRCULATION

Right of Ways provide necessary space for the movement of people and vehicles. Vacations may be approved only if they do not result in negative effects on the current and future needs for the City's vehicular, bicycle, or pedestrian circulation systems unless the negative effects are fully mitigated by the petitioner. When the traffic functions of a street are necessary for the transportation network, the City will not grant the vacation.

Arterial streets, truck routes, and truck streets may be vacated only when an alternative circulation route is substituted and impacts of the loss of the street are mitigated.

The City will not approve vacations that:

- i) Propose agreements for public vehicular travel across private property to offset impacts;
- ii) Result in diverting truck or commercial traffic to nearby residential streets;
- iii) May encourage traffic code violations, such as backing out from an alley onto a street;

- iv) Result in a measurable reduction to the functionality or capacity of arterials or collector streets, as defined by the City's Comprehensive Plan, that cannot be mitigated to a level of no impact;
- v) Result in increase response times for emergency responders;
- vi) Result in non-conformance with City block length standards, or where block perimeter standards are not met prior to vacation, any Right of Way vacation which results in an increase in non-conformance block length;
- vii) Result in an increase in vehicle or pedestrian trips on surrounding existing streets as a result of the vacation of the Right of Way;
- viii) Result in partial vacation of a Right of Way where the remaining Right of Way width is less than that required in the Comprehensive Plan; or which creates a Right of Way island, where the remainder is not connected or feasibly utilized for the transportation network.

Transit facilities and routes will be protected through the Right of Way Vacation process. Right of Ways that are used by public transit agencies will be considered for vacation only after review and comment by those agencies and identification of alternative locations or routes for those transit functions.

Pedestrian circulation shall be protected when approving a vacation. Formal and informal pedestrian routes, may be vacated only for public purposes, such as parks. Pedestrian circulation functions of the Right of Way may be replaced by a pedestrian route across private property only when:

- ix) A major public benefit, as approved by City Council, is provided;
- x) A perpetual agreement for public access across the property is reached;
- xi) The public access to be provided is comparable in terms of safety, convenience, and directness; and
- xii) The free speech functions of the Right of Way will be maintained in public spaces.

Alleys and paths that are part of the pedestrian circulation system, may be vacated only when comparable public pedestrian circulation is provided and the pedestrian environment along the corridor is improved. Similarly, vacations resulting in a reduction of sidewalk width may be vacated only when provisions are made to otherwise accommodate the pedestrian traffic. Right of Way vacations that include unimproved pedestrian trails may be approved only when the public pedestrian function is protected.

The continuity and integrity of existing and planned bicycle paths and bicycle lanes, will be protected. Such streets and off-street pathways may be vacated only when a comparable or better bicycle Right of Way is provided as part of the vacation. Bicycle access shall be comparable in terms of safety, convenience, and directness.

If a vacation is granted, the Council may impose conditions on the vacation to reduce impacts on vehicular, transit, freight, pedestrian, and bicycle circulation. Such conditions may be in addition to any conditions resulting from environmental review or land use regulation.

b) ACCESS

Right of Way Vacation petitions may be approved only if access is retained to properties on the block where the Right of Way is located and to properties on neighboring blocks or streets, or through dedication and improvements by the Petitioner so an equal level of access is provided.

If the number of curb cuts along a street frontage is likely to be increased due to the petition, the vacation will not be approved.

If there is public parking on the Right of Way proposed to be vacated, the City will analyze if the Petitioner's proposal for mitigation meets or exceeds the currently available parking. Only petitions that improve parking availability and ease of use will be approved.

If a vacation is granted, the Council may impose conditions on the vacation to reduce impacts on vehicular, freight, pedestrian, and bicycle access. The conditions may be in addition to any conditions resulting from environmental or land use review and analysis.

c) UTILITIES

Right of Ways that contain or are needed for current or future utility lines or facilities may be vacated only when the utility can be adequately protected with an easement, relocation, fee ownership, or similar agreement satisfactory to the utility owner and the Petitioner has obtained and provided the consent of all utilities.

Public Right of Way provide utilities with corridors for the efficient transportation of people and goods, collection of solid waste, and delivery of utility services to the public in the least costly manner possible. Utilities generally assess vacation petitions from an operational perspective to ensure that a vacation will not impair current service reliability and capacity levels, nor limit the ability to expand services in the future. The growth of telecommunications utilities above and below ground, increased urban densities, and demand for undergrounding of utility facilities all place pressure on the value of public rights-of-way, for future utility needs.

Utilities will be given an opportunity to review the proposed vacation, to identify existing and future interests in the Right of Way, and to indicate what actions are necessary to protect their interests and the interests of their customers. The petitioner is responsible for working with the utilities to identify and address any utility issues. The petitioner shall ensure that each utility will be in a similar position as before the vacation without detriment to current or future utility services.

If utility easements are required to maintain service, the easements shall state the rights and responsibilities of each party. Utilities may prohibit constructing buildings, structures, grading and filing, and other uses over or under their easements where the activities would inhibit operation of or prevent access to the utility facilities for maintenance and repair, cause extra cost or liability to the utility, or affect the safety and integrity of the utility. Any costs for the repair of damages to the improvements placed on or over the utility easement by the property owner due to the utility maintenance repair or installation will be the express responsibility of property owner.

The Council may impose conditions on vacations to assure continued service to the public in the most efficient and least costly manner.

d) FREE SPEECH

Courts have recognized the role of Right of Way as spaces for public speech and dialogue. The City will consider the potential loss of free speech activities when reviewing Right of Way Vacations and will not vacate a public place if the loss of the public speech function cannot be adequately mitigated.

Right of Ways are dedicated for public use and enjoyment. Vacations that solely result in the private regulation of access to public property shall not be granted. Vacations are not considered a solution to security problems and shall not normally be approved for this reason absent extraordinary circumstances.

The Council may impose conditions on vacations to preserve the public's right to free speech, particularly within any privately-owned public space offered as a public benefit in exchange for a Right of Way vacation.

e) PUBLIC ASSEMBLY

Right of Ways have always served as a place of public assembly. The City will consider the importance and impact of the request on the community. Right of Ways that are adjacent to public uses will be particularly scrutinized to ensure that the public's right to congregate will not be impaired.

The City may impose conditions on vacations to maintain the public's right to assembly, particularly within any privately-owned public space offered as a public benefit in exchange for a Right of Way Vacation.

f) OPEN SPACE

The open space opportunities provided by Right of Ways are important resources that contribute to quality of life and become more valuable as the City becomes more densely developed. The contribution of this function to the public's existing and future quality of life is an important consideration when reviewing each proposed vacation. The open space functions provided by the Right of Way will be identified and the effects of their loss will be analyzed.

When the City determines that the open space function provided by a Right of Way shall be retained, the Right of Way may be vacated only if the open space functions can be retained or replaced by dedicating to the City other comparable Right of Way or by providing other publicly-accessible property.

The impact of development associated with Right of Way Vacations on open space and pedestrian amenities shall be limited. The analysis of the open space functions of Right of Ways will consider the impact of the proposed vacation on:

- i)** The contribution of the Right of Way to open space areas;
- ii)** Use of the Right of Way as a space for play and recreation;
- iii)** The role of the Right of Way as an area of neighborhood focus and activity, and
- iv)** Privacy impacts resulting from the Right of Way open space being occupied by a proposed structure.

The City will only approve vacation requests of undeveloped Right of Ways used by the community as open space to facilitate development when the proposed mitigation exceeds the existing conditions.

Existing and proposed urban trails, public paths, other rights-of-way connecting parks and open spaces, or streets connecting the community with parks, schools, shorelines, or other public facilities will not be vacated unless the Right of Way is exchanged for other land that provides better pedestrian or bicycle pathways resulting in improved open space function.

The Council may impose conditions on vacations to mitigate any potential negative effects of the vacation on the open space functions of the Right of Way.

g) LIGHT AND AIR

The light and air opportunities provided by the Right of Way are important resources that contribute to quality of life and public health and becomes more valuable as the City becomes more densely developed. The contribution to the public's existing and future quality of life is a consideration in each proposed vacation.

The analysis of the light and air functions of Right of Ways will consider the impact of the proposed vacation upon the access to sun, light, and air circulation provided to pedestrians, bicyclists, vehicle occupants, and abutting properties.

The analysis will include the potential shadow impacts of the increase in development potential directly attributable to the vacation on nearby public parks and public open spaces. Any potential impacts of the vacation on light and air will be compared with similar impacts that would result from development without the vacation. Vacations generally shall not be approved if the development proposed as part of the vacation request would result in additional shadowing of parks or other public spaces.

The Council may impose conditions on a vacation to reduce shadow impacts.

h) VIEWS

The views provided along Right of Ways are important resources that contribute to the public's quality of life. Views are of particular value to members of the public that do not have private views. The contribution of this function to the public's existing and future quality of life will be a consideration in reviewing vacations.

Within the City Center, as identified within the City's Comprehensive Plan, Right of Ways shall not be vacated except when conditions are placed on the vacation to ensure public views are preserved.

Right of Ways shall not be vacated unless the Petitioner ensures that the areas above the former Right of Way remains open to the sky and to protect views from uphill public spaces. Public views worthy of protection include, but are not limited to views:

- i)** From public streets, public open spaces, or public places;
- ii)** From a substantial number of residences or properties abutting the Right of Way proposed to be vacated,
- iii)** Of important natural features, such as mountains, waterbodies, and public greenbelts; and
- iv)** Of designated landmarks and points of cultural or civic interest.

Potential view impacts from a vacation will be identified and compared with a no vacation alternative. The quality of impacted views will be considered when evaluating each proposed Right of Way vacation.

The Council may impose conditions, including height limitations on development, on vacations to mitigate any potential negative effects of the vacation on the view functions of the Right of Way.

i) LAND USE AND URBAN FORM

Vacations affect the land use and development patterns in an area by adding to the developable land base, altering the local land division pattern, changing vehicular and pedestrian movement patterns, and increasing the development potential on the vacated and abutting properties.

Typically, Right of Way Vacation petitions are intended to facilitate a development project. Petitioners shall provide the City with information about the completed project's density and the development potential of the property without a vacation. The information shall be provided as the percentage increase in the development potential and the additional square footage added to the project.

Petitioners shall provide the City with information on how the project advances City planning goals, how it relates to City Comprehensive Plan, and how the project meets the zoning criteria where the project is located.

A vacation petition may be approved only when the increase in development potential that is attributable to the vacation would be consistent with the Comprehensive Plan. The criteria considered for making individual vacation decisions will vary with the plans, policies, and regulations for the area where the Right of Way is located. The Council may place conditions on a vacation to mitigate negative land use effects.

Vacations may be approved only when the remaining Right of Way network meets the maximum block perimeter requirements, or in areas where the block perimeter requirements are not met prior to the vacation petition there is no increase in non-conformance.

i) Land Use Considerations

To determine if the land use and urban form effects of a vacation are in the public interest, the following factors will be considered:

- (1) The long- and short-term effects of the changes in development potential attributable to the vacation on the circulation, access, utility, light, air, open space, and view functions of nearby streets and public places;
- (2) The consistency of land use changes with the Comprehensive Plan, particularly in the land use, transportation, and neighborhood elements of the plan;
- (3) The compatibility of the size, scale, and character of potential development with the size, scale, and character of existing development in the area and development as provided for by the Land Use Code, given typical lot sizes and configurations;
- (4) The compatibility of the size, scale, and character of the blocks formed by the vacation when compared with the size, scale, and character of existing blocks in the area and goals for pedestrian connectivity and circulation; and
- (5) The post-vacation lot size and configuration compared with surrounding properties and with the local pattern of land division and organization.

In areas where streets provide an edge or boundary between zones or areas of different scale and character, the Right of Way may be vacated only when a suitable alternative boundary buffer can be achieved with the proposed vacation.

In addition to the general Right of Way vacation policies and guidelines, Comprehensive Plan policies for the area and the relationship between the proposed vacation to other City plans and policies such as transportation modal plans will be used to determine if the land use changes of each vacation are in the public interest.

ii) Area-specific review

Guidelines related to specific areas are provided below. They shall be used to supplement the general provisions and guidelines of these policies and other policies for protecting the public interest.

(1) Urban Centers and Urban Villages

In addition to other guidance regarding specific land uses described below, for Urban Centers and Urban Villages the policies of adopted neighborhood plans will be considered, as appropriate.

(2) Manufacturing/Industrial Centers

Many Right of Ways in or adjacent to Manufacturing/Industrial Centers provide transportation for freight transport, loading, and delivery. Impacts on truck routes, intersections, and access points as a result of Right of Way vacations may impact supply chains that serve areas outside the immediate area of vacation. The capacity and functionality of these critical corridors will be preserved.

(3) Single-family areas

Right of Ways in single-family areas provide a number of public benefits including providing for consistency in the pattern and scale of development and providing important open space in a neighborhood. Except as noted below, Right of Ways in single-family areas shall be retained as these areas may be needed to provide for public uses, such as utility corridors that cannot be currently identified or anticipated. Petitions for vacations in single-family areas shall be reviewed by the same criteria as applied to other vacation petitions, including the requirement that the vacation provide a long-term benefit to the public.

Clustered housing and other planned housing developments or innovative housing initiatives in single-family-zoned areas shall be reviewed based on the criteria established for the review of multifamily areas.

(4) Multi-family areas

In general, Right of Ways in multifamily areas will be retained to aid in vehicular, bicycle, and pedestrian circulation and neighborhood access. Petitions will be reviewed for potential impact on neighborhood traffic volumes, associated noise, and access.

(5) Commercial, mixed-use, and City Center areas

In general, Right of Ways in commercial, mixed-use, and City Center areas will be preserved to facilitate moving goods and people and maintain access to property that is separate from pedestrian routes. In general, these Right of Ways will be retained unless it can be demonstrated that the vacation meets another important public purpose without jeopardizing the area's functioning and its compatibility with surrounding areas. A vacation must preserve access to off-street loading and parking areas and the continuity of street fronts, particularly in areas with pedestrian activity.

(6) Shoreline overlay districts

Vacation of a Right of Way that abuts a waterbody is regulated by RCW 35.79.035.

- (a) The City will consider vacating Right of Ways that abut a salt or fresh waterbody only if the vacation is sought to enable the City to acquire the property for beach or water access purposes, boat moorage or launching sites, park purposes (including

open space preservation), public view, recreational purposes, water-dependent or water-related educational or interpretive purposes, water quality improvement purposes, or other water-dependent or water-related public uses.

- (b) To preserve future public access opportunities, the option of leasing Right of Way ends, as permitted in RCW 35.23.410, shall be explored as an alternative to vacation.
- (c) Vacations of public Right of Way abutting any waterbody may be approved only when comparable or improved public access is provided. Providing new public access shall not be considered a public benefit for the purposes of these policies.
- (d) Right of Way that is needed for vehicular access to the water may be vacated only when comparable access will be provided.
- (e) If upland Right of Way is needed for public access to waterfront Right of Way or other public access to the water, it may be vacated only when comparable or better public access is provided.

(7) Environmentally critical areas

Right of Ways in geologic hazard areas and steep slope erosion hazard areas, wetlands, flood plains, fish and wildlife habitat conservation areas, or other critical areas shall generally be retained to reduce development intensity in environmentally critical areas and to protect public health, safety, and welfare.

iii) Land use conditions on vacations

The Council may place conditions on vacations to guard against the negative land use effects of additional development potential attributable to the vacation and to ensure that policy objectives are met, as follows:

- (1) The conditions will be related to the identified negative effects attributable to the vacation.
- (2) Land use conditions will be stated in terms of development parameters, such as floor area maximums or building envelopes that may not be surpassed and will generally run with the land.
- (3) Land use conditions imposed on a vacation do not preclude related project conditions being imposed under SEPA. If a vacation-related proposal is subject to SEPA review, the review may reveal the need for SEPA conditioning that reduces the upper limits placed on the vacation.
- (4) Land use conditions imposed on a vacation, in addition to conditions applied pursuant to the Land Use Code, SEPA, the Building Code and other City codes, will be relied on to regulate post-vacation development.
- (5) Approval of a Right of Way vacation is not City approval of the development project for the site and shall not relieve the petitioner of obtaining all necessary land use approvals, building permits, Right of Way use permits, or other City approvals before developing the site.

j) OTHER CONSIDERATIONS IN PUBLIC TRUST ANALYSIS

i) Undeveloped Right of Ways

Vacation of undeveloped Right of Way sections will generally be discouraged to:

- (1) Retain the existing pattern of extra setbacks and open space in residential neighborhoods;
- (2) Provide opportunities for pedestrian and bicycle amenities and connections;
- (3) Preserve opportunities for utility connections;
- (4) Maintain areas of natural scenery along view streets and boulevards;
- (5) Provide a buffer between land uses and zoning districts; and
- (6) Provide continuity of wildlife habitat corridors.

ii) Subsurface Vacations

Subsurface Right of Way vacations may be approved only when protection against future impairment of the street's surface is assured, current and future utility functions are provided for, and the City is adequately protected from potential liability from failure of the surface and any other retained segment below grade due to problems with the underlying structure. A subsurface vacation shall maintain or improve all current and planned functions of the Right of Way and shall not increase traffic impacts on surrounding Right of Way.

Subsurface vacations shall consider future use of the subsurface portions of the Right of Way for future utility needs and future transportation needs.

A subsurface vacation shall, at a minimum, be deep enough to provide space for a utility corridor large enough to accommodate all utilities currently serving the area and potential future utility needs. The Council may require that a project including a subsurface vacation provide a utility corridor or other mitigation of impacts on potential future utility needs. The subsurface vacation shall be designed so that there will be no impact to the public nature and the surface functions of the Right of Way.

iii) Aerial vacations

Aerial vacations will be considered only in limited circumstances. Aerial portions of the Right of Way are an important resource providing light, air, open space, and consistency in the development pattern. These aerial portions are an important public trust function of the Right of Way.

Aerial vacations will be considered only as follows:

- (1) For the development or expansion of public facilities, public institutions, or non-profit institutions, the petitioner shall demonstrate to the satisfaction of the Council that no feasible development alternative exists; and
- (2) That neither a Right of Way lease or subsurface vacation can adequately meet the needs of the petitioner.

Petition review shall include specific review of the impacts of the proposed aerial structure, including addressing items as the design of the structure and its dimensions, transparency, material quality, the scale of the project including the aerial portion, and the impact on the streetscape below the structure. The public trust functions of light, air, open space, and views will be carefully reviewed for aerial vacations. The Council shall require mitigation specific to the urban design impacts of the aerial structure.

iv) Trade or exchange of property

The review of any vacation may consider the opportunity for exchange of property. Any proposed property exchange shall identify property the City is willing to accept. The Petitioner shall be responsible for providing, as needed, title insurance, environmental site assessment and environmental remediation, deeds in a form acceptable to the City, and filing and recording fees or escrow. Additionally, the petitioner shall be responsible for any taxes resulting from the transfer. Exchanges may be considered when the property:

- (1) Would be useful to mitigate or enhance the various aspects identified in the property proposed to be vacated, such as exchanging a vacation for a street conforming to the ultimate built condition in the Comprehensive Plan;
- (2) Would result in better circulation and access than is provided for by the current street grid, by aligning misaligned streets;
- (3) Would exchange property identified as open space for property that would create a contiguous open space parcel; or
- (4) Would shift development from property identified as open space to a property with less environmental impact.

v) Alternatives to vacation

When reviewing the petitioner's indicated use of the property, the City may consider the practicality of issuing Right of Way use permits to provide for temporary uses. In circumstances where a Right of Ways use permit can accommodate the uses indicated by the petitioner, a permit is preferred and a vacation will not be granted. A Right of Way use permit as an alternative to a Right of Way vacation may be issued under the following conditions:

- (1) The private use of an undeveloped Right of Way does not hinder the achievement of any identified objectives;
- (2) Private landscaping or gardening of undeveloped Right of Way may be allowed with a Right of Way use permit, provided that public pedestrian access and circulation and access to shoreline areas are retained; and

3) Street corridor views are not obstructed.

4) ANALYSIS OF PUBLIC BENEFITS OF THE VACATION

a) PUBLIC BENEFIT REQUIREMENT

A vacation shall include a commitment to provide public benefits. The concept of providing a public benefit is derived from the public nature of Right of Ways. Right of Ways, whether improved or unimproved, provide important benefits to the public. Among the various benefits are preserving the street grid that provides for consistency in the development pattern and influences the scale and orientation of buildings. These benefits are in addition to the public functions provided by Right of Ways, including:

- i) Moving people and goods in vehicles, on foot, or by bicycle; and providing for current and future utility services, and for street trees and other amenities.
- ii) The City acts as a trustee for the public in its administration of Right of Ways. Courts have required that in each vacation there shall be an element of public use or benefit, and a vacation cannot be granted solely for a private use or benefit. Therefore, before this public asset can be vacated, there shall be a permanent, long-term, benefit to the public.
- iii) The fact that these benefits are provided equally to all members of the public may be most important to those who have the least. To best address the needs of the community, a strong focus on social equity is important in assessing the public benefits included as part of a Right of Way vacation petition.
- iv) Proposed vacations may be approved only when they provide a permanent, long-term, public benefit. Because the public permanently loses the Right of Way, short-term public benefits or public benefits that solely benefit individuals will not be considered. The following are not considered public benefits:
 - (1) Mitigating the vacation's adverse effects;
 - (2) Meeting code requirements for development;
 - (3) Paying the required vacation fee;
 - (4) Facilitating economic activity; or
 - (5) Providing a public, governmental, or educational service.

While the nature of the project is a factor in deciding the adequacy of a public benefit proposal, it is not itself a public benefit.

Consequently, the public benefit shall exceed elements required by City Code or mitigation required under SEPA or other regulations and is in addition to Right of Way vacation fees and other obligations. The petitioner's public benefit proposal shall recognize the loss of the benefits provided by the Right of Way to the public and the gains received by the petitioner. The public benefit proposal should also consider the comments, ideas, and concerns voiced by the public in the early community engagement process.

The public benefit analysis should balance what the public loses through the vacation with what the public will gain from the project. The comparison is intended to be an element of evaluating a public benefit proposal. The public benefit should not merely be compensatory and should provide a benefit to the public. In particular, public benefits that address the needs of those members of the public most vulnerable to the negative impacts of development.

The proposal to provide a public benefit does not entitle a petitioner to a vacation; the decision whether to grant a vacation is based on a holistic review of all elements in these policies. The

petitioner shall provide objective information about the public benefit proposal, such as budget, dimensions, materials, and other relevant facts. The public benefit proposal shall include a table or chart that details the public benefit elements, the cost/budget, timing of implementing the public benefit elements, whether the elements are required by code, and additional information as requested by the City.

As part of the petition process, the petitioner shall provide information to the City regarding the public benefit proposal. The City will assist the petitioner in refining and developing the public benefit proposal. The Council will make the final determination as to whether the public benefit package is acceptable.

Several factors will be considered in identifying whether a public benefit package is sufficient, including the:

- Zoning designation;
- Street classification of the Right of Way to be vacated;
- Traffic volumes on the street proposed to be vacated;
- Designation of the street in transportation modal plans and functions of the street in modal networks;
- Square footage of the project;
- Square footage of the area to be vacated;
- Vacated area's contribution to the site's development potential, including the percentage increase of the project and additional square feet; and
- Cumulative impacts of vacations in the area.

The following factors are not public benefits, but may be considered when reviewing the public benefit package:

- Project compliance with City policies, goals, and the Comprehensive Plan;
- Proposals designed to improve race and social equity, improve access to opportunity, and reduce the threat of displacement by providing quality jobs or education to communities with low access to opportunity or increasing the supply of affordable housing beyond City requirements;
- Addressing the effects of the vacation on vulnerable low-income populations;
- Providing affordable or special needs housing, job training, or other human services;
- The public nature of the project;
- Ideas resulting from the early community engagement process;
- Neighborhood support or opposition;
- Broad-based community support or opposition;
- Support or opposition from non-governmental organizations or other government entities;
- Agreements with non-governmental organizations or community-based organizations to provide benefits beyond those proposed for the Right of Way vacation;

- Protecting landmarks and other historic/community resources; and
- Protecting environmentally sensitive lands.

b) PUBLIC BENEFITS IDENTIFIED

Public benefit proposals may be informed by needs and ideas identified through community engagement. Public benefits may include, but are not limited to:

i) Physical public benefits

The City may accept a commitment to provide and maintain physical benefits that serve the public, including but not limited to:

- (1) Creating or enhancing publicly-accessible plazas, open spaces, or other green spaces;
- (2) Streetscape enhancements beyond those required by codes such as widened sidewalks, stairways, additional street trees or landscaping, street furniture, pedestrian lighting, wayfinding, art, or fountains;
- (3) Public art;
- (4) Enhancing the pedestrian or bicycle environment;
- (5) Pedestrian trails, accessible public routes providing access through the site, and improvements to existing public stairs;
- (6) Spaces that support City goals for social equity;
- (7) Bicycle paths, protected bike lanes, or cycle tracks;
- (8) Other improvements to the pedestrian or bicycle environment, such as intersection safety improvements;
- (9) View easements or corridors;
- (10) Preserving landmark buildings or other community resources; or
- (11) Implementing an element from a City adopted Neighborhood Plan or other City adopted plans.

ii) Programmatic public benefits

The City may accept a long-term or permanent commitment to undertake a program to address systemic inequities as a public benefit. The City will not accept a short-term proposal or a proposal to fund an existing program. The City will look for a long-term commitment to the program and may impose conditions on the proposed public benefit to ensure that the long-term nature of the benefit is ensured.

iii) Real Property

The City may accept real property as a public benefit. The property proposed to be conveyed must be property the City is willing to accept. The petitioner is responsible for any costs associated with the conveyance including appraisals, title work, environmental site assessment and remediation, deeds or other document production, taxes on the transaction, or other expenses related to the conveyance of real property, including environmental remediation. Where other conditions or specific mitigations require dedication of land, such dedication is a mitigation of impacts and will not constitute a public benefit.

iv) Payment of Funds

Where the City has an identified project on its Transportation Improvement Plan that would provide an equal or above public benefit and the Petition has demonstrated to the City's satisfaction that it is not practicable to provide or develop public benefits such as those listed above, at the City's sole discretion, it may accept the payment of in-lieu funds for the identified project provided the project can be constructed in a City determined reasonable time frame concurrent with the Petitioner's proposal to provide the public benefit. A payment to meet public benefit obligations does not substitute for paying the required Right of Way vacation fee or meeting any other policy requirements.

5) PROCESS FOR CITY REVIEW OF RIGHT OF WAY VACATION APPLICATIONS

a) GOALS/INTENT OF PROCESS

Depending on the complexity and completeness of the Petitioner’s application, a Right of Way vacation review process can be lengthy and complicated. While City Council is the ultimate decision-maker, the Council looks to City departments and the Land Use and Transportation Committee to provide a thorough review and analysis of a petition based on City Code, City Policies, and the interests of the public. Review timeframes of a Right of Way vacation petition largely rely on the timeliness and responsiveness of the petitioner to requests for information and comments.

This section is to provide transparency and predictability for petitioners, the public, and City departments.

b) PETITIONERS

RCW Chapter 35.79, restricts petitions for Right of Way vacations to “owners of an interest in any real estate abutting upon any street or alley.” A petition shall be filed first with the Public Works Department and subsequently with the City Clerk in accordance with the requirements of this section. If the petition contains all required information and is signed by the owners of two-thirds of the property owners adjacent to the Right of Way to be vacated, the City will proceed with analyzing the petition.

The Council may also initiate a Right of Way vacation process through a resolution. City Council will initiate Right of Way vacations by resolution only for a public purpose or when extraordinary circumstances prevent following the petition process. If the Council initiates a petition, all other aspects of these policies, including protecting the public trust and the requirements for providing a public benefit still apply.

c) PRE-PETITION ACTIVITIES

In preparing to file a petition for a Right of Way vacation, consult with Public Works staff on the feasibility of the petition. A meeting to discuss feasibility with City staff and other interested agencies, utilities with facilities or jurisdiction will be held.

Prior to submitting a vacation petition, the petitioner is required to:

- i)** Prepare a community engagement plan. The Right of Way vacation petition shall include a community engagement plan and a report on early community engagement;
- ii)** Conduct early community engagement according to the community engagement plan;
- iii)** Present the vacation at a regularly scheduled meeting of the Land Use and Transportation Committee; and,
- iv)** If the project is a Capital Improvement Project brought by the City or any other public agency, present an evaluation of vacation and no-vacation alternatives.

d) REQUIRED COMPONENTS OF THE PETITION

Petitions shall be submitted to Public Works through the City’s Permit Center with all required supporting documentation. Petitions submitted with incomplete or missing required information will be returned to the petitioner with no action. Once the petition is determined to be complete, Public Works will file the petition with the City Clerk, which begins the formal review of the petition.

Petitions shall, at a minimum, include the following:

- i) Site information:**
 - (1) Identification of the Right of Way proposed for vacation, including a legal description and, if Public Works determines it is necessary, survey and title work;
 - (2) Site and topographical maps; and
 - (3) Signatures of the owners of more than two-thirds of the property abutting the Right of Way proposed for vacation.
- ii) Project information:**
 - (1) Information identifying the development team; and
 - (2) Location and description of the project proposed for the site, including preliminary project site plans.
- iii) Land use information:**
 - (1) Current zoning and Comprehensive Plan land use designation;
 - (2) A summary of current applicable City plans and policies, including Comprehensive Plan policies;
 - (3) Identification of any land use actions required to develop the project and a report on the status of each of those reviews;
 - (4) A comparison of development of the site with and without a Right of Way vacation;
 - (5) An urban design analysis of the area surrounding the project site that includes ½ mile area surrounding the vacation;
 - (6) An analysis of the land use and urban design impacts of development; and,
 - (7) An analysis of the impacts of the vacation on existing essential public facilities;
- iv) Transportation information:**
 - (1) Information regarding the Right of Way to be vacated, including the current use and design of the street;
 - (2) Designation of the street, including street type;
 - (3) Analysis of the transportation impacts of any loss of Right of Way, including impacts to transit, freight, pedestrian, and bicycle circulation and access; and
 - (4) Analysis demonstrating the capacity of the transportation network with and without the vacation and identifying mitigation measures, if necessary, to mitigate any reduction in vehicular, pedestrian and bike capacity.
- v) Utility information:**
 - (1) Identification of all utilities in the Right of Way.
- vi) Historic sites or buildings:**
 - (1) If the Right of Way vacation would include or would be adjacent to a historic landmark or site, identify any historic resources and provide a determination of completeness for an application for a certificate of approval from the relevant board.

vii) Community engagement:

- (1) The community engagement plan and a report on all community engagement completed to date, including a report on comments from the public and how the petition responds to those comments;
- (2) If the project is in an urban center, urban village, or other area covered by a neighborhood plan, the goals and policies from the neighborhood plan; and
- (3) If the project is in or adjacent to a zoned Manufacturing or Industrial Land Use, the goals and related policies from the Comprehensive Plan, and input from businesses and public agencies that may be impacted by the vacation.

viii) Right of Way vacation policies:

- (1) A preliminary outline on how the vacation meets or addresses the Right of Way vacation policies; and
- (2) A preliminary public benefit proposal.

ix) Environmental review:

- (1) If environmental review is required for the project, a SEPA checklist.

x) Appraisal:

- (1) An appraisal report of the area requested to be vacated, completed by a certified appraiser.

xi) Previously rejected Right of Way vacations:

- (1) If the Council has previously rejected a Right of Way vacation petition for part or all of the Right of Way proposed to be vacated, the new petition should explain how circumstances have changed since the previous Council vote.

xii) Filing fee

- (1) A filing fee shall be paid pursuant to the current adopted fee schedule.

e) REVIEW PROCESS

There are two stages to the Right of Way vacation review: public trust analysis and public benefit analysis. The following steps will provide for review of a Right of Way vacation petition. Each step may be iterative and may take multiple rounds of review depending on the complexity of the project or the quality of the information provided. While Right of Way vacations are legislative actions that are not subject to the specific timelines for review that apply to land use permits, City staff will work with the petitioner to make the process as efficient as possible, assuming all necessary information to support City staff efforts is provided by the applicant in a timely manner.

i) Circulating the petition

After Public Works files the complete petition with the City Clerk, Public Works will circulate the petition to City departments, South King Fire Department, Federal Way School District, utilities, transit agencies, and other organizations as appropriate or requested by Council.

ii) Early Council Briefing or Forum

Upon receipt of a complete petition Public Works will provide an informational briefing to the Land Use and Transportation Committee.

When the committee deems it appropriate, they may request a briefing for the full Council.

The Land Use and Transportation committee may also direct staff to work with the Petitioner to host a briefing or public open house on the Right of Way vacation petition prior to commencing technical review. The purpose is to provide the public with an early opportunity to provide input on the vacation to the Council, the petitioner, and City reviewers.

iii) Public Trust Analysis

The Public Works department will make the petition available to other City departments, South King Fire Department, Federal Way School District, utilities, transit agencies, and other organizations as appropriate, may review the public trust elements of the petition and provide comments to Public Works on whether the petitioner has fully analyzed the impacts of the proposed vacation along with developing mitigating measures to address any such impacts. Public Works will provide the Petitioner with any comments and provide the Petitioner an opportunity to respond to the comments. This may result in multiple rounds of review, comment, and refinement of the analysis and petition with subsequent information to adequately addresses the impacts of the vacation. Additional information may be requested from the petitioner to complete the analysis.

If an environmental impact statement is required, the Land Use and Transportation Committee will not make a final recommendation to the Council on the public trust elements of a Right of Way vacation petition until a Final Environmental Impact Statement has been published.

If an environmental impact statement is not required, the Land Use and Transportation Committee will only make a final recommendation on the public trust elements of a Right of Way vacation petition when sufficient information to assess the impacts of the vacation on the public trust functions has been compiled.

For City Capital Improvement Projects seeking a vacation, the Land Use and Transportation Committee shall also have approved the project concept, or 30% review, either before or concurrent to making any final recommendations on the public trust analysis.

Non-city public agencies seeking a vacation may request the Land Use and Transportation Committee, through a request to Public Works, to review and make a preliminary recommendation to the Council on the public trust analysis concurrent with submission of a 30% project submission and issuance of a draft environmental impact statement, provided that sufficient information to assess the impacts of the vacation on the public trust functions has been submitted by the petitioner. Subsequent substantial changes to the 30% drawings, at the sole determination of the City, may invalidate the public trust analysis and require additional or updated analysis. No final action will be taken until after a Final Environmental Impact Statement has been published.

The Public Works Director shall prepare a report on the vacation petition request and make an overall recommendation on the petition, addressing each component of the public trust analysis and any recommended mitigation, to the Land Use and Transportation Committee. The Land Use and Transportation Committee will consider comments and issues identified by City Departments, South King Fire Department, Federal Way School District, utilities, transit agencies, and other organizations, and, as relevant, other City Boards and Committees, and make a recommendation to the Council on the public trust elements of the petition. The Public Works Director shall incorporate the Committee's recommendation into

the report on the public trust elements of the petition and make a final recommendation to the full Council.

iv) Public Benefit Analysis

The intent of the public benefit analysis phase of the Right of Way vacation review is to ensure that adequate public benefits will be provided to offset the loss to the public of the public trust functions. This review will be guided by these policies.

City departments, South King Fire Department, Federal Way School District, utilities, transit agencies, and other organizations as appropriate, may review the public benefit analysis and provide comments to Public Works. Public Works will provide the Petitioner with any comments and provide the Petitioner an opportunity to respond to the comments. This may result in multiple rounds of review, comment, and refinement of the analysis with subsequent information to adequately resolve the comments. Additional information may be requested from the petitioner to complete the analysis.

For City Capital Improvement Projects seeking a vacation, the Land Use and Transportation Committee shall also have approved a 60% review either before or concurrent to the Committee making any final recommendations on the public benefit analysis.

Non-city public agencies seeking a vacation may request the Land Use and Transportation Committee, through a request to Public Works, to review and make a preliminary recommendation to the Council on the public benefits analysis concurrent with submission of a 60% project submission and subsequent to issuance of a draft environmental impact statement, provided that sufficient information to evaluate the public benefit analysis has been submitted by the petitioner. Subsequent substantial changes to the 60% drawings, at the sole determination of the City, may invalidate the public benefit analysis and require additional or updated analysis. No final action will be taken until after a Final Environmental Impact Statement has been published.

At the recommendation of the Land Use and Transportation Committee, the City Council may convene a subcommittee consisting of Council or Commission members, City staff, and individuals with expertise related to items within the public benefit analysis to receive public comment and review public benefit packages.

The Public Works Director shall prepare a report on the public benefit analysis and make an overall recommendation, addressing each component of the public trust analysis and any recommended mitigation, to the Land Use and Transportation Committee. The Land Use and Transportation Committee will consider comments and issues identified by City Departments, South King Fire Department, Federal Way School District, utilities, transit agencies, and other organizations, and, as relevant, other City Boards and Committees, and make a recommendation to the Council on the public benefits elements of the petition. The Public Works Director shall incorporate the Committee's recommendation into the report on the public benefits elements of the petition and make a final recommendation to the full Council.

The Land Use and Transportation Committee will consider the recommendations of the subcommittee, City departments, and public testimony in developing a recommendation to the Council on the public benefit package.

v) Final Recommendation

Public Works will compile all recommendations and comments on the public trust analysis and the public benefit package. The Public Works Director will prepare a recommendation and a resolution setting a public hearing date for the Right of Way vacation for presentation to the Land Use and Transportation Committee and then City Council.

vi) Council Review and Conditional Approval

The Council will hold a public hearing on the petition. It will consider public comments, the recommendations of the Public Works Director, City departments, South King Fire Department, Federal Way School District, utilities, transit agencies, and other organizations as appropriate. The Council may ask for additional information from the petitioner related to the public trust analysis or public benefit proposal before deciding whether to approve the petition.

If the Council grants a Right of Way vacation, its initial approval will be conditional. The Council grants a Right of Way vacation subject to conditions to ensure the project is built as proposed, to mitigate any impacts, to assure the provision of the public benefit, and to guarantee required fees are paid. Following this conditional approval, City departments may issue other necessary permits and the petitioner may proceed with developing the project.

Before beginning work that would alter the Right of Way, the petitioner shall submit and obtain approval of a plan documenting how and when each condition will be met. Once approved, the petitioner shall obtain any required permits from Public Works for work within the Right of Way prior to it being vacated. The petitioner shall fulfill the conditions in a manner approved by the City. As the development proceeds and the petitioner works on meeting the conditions, regular reports shall be provided to Public Works.

The petitioner bears the responsibility for satisfying the conditions and all costs associated with satisfying the conditions. The conditions imposed on a vacation vary and the means to assure compliance will also vary as follows:

- (1) Time for completion: Conditions will be placed on the vacation requiring starting development by a certain date and completing development by a certain date. The maximum time for starting development will be 12 month and completion of development will be 5 years, unless the petitioner demonstrates special circumstances and the Council approves longer time frames. If work is not started or completed within the stated period, the petitioner will be required to receive approval from the Council to extend the conditional approval. If construction work has not started within the stated period the Council may require that a new petition be filed, and the vacation be reviewed anew.
- (2) Conditions related to the development: Conditions related to developing the project vary and may be imposed to address design, transportation issues, to mitigate impacts, or as related to providing the public benefit. These types of conditions are generally met by completing the project. The City may require a performance bond or other method to ensure the work is completed.
- (3) Conditions related to utilities: Following the vacation conditional approval, the petitioner shall perform all identified work associated with utilities identified in the vacation conditions. All easements, restrictive covenants, and relocation agreements shall be executed before the vacation ordinance is passed. If acceptable to the utility, a performance bond may be posted before final vacation approval.

- (4) Transportation Conditions: Any conditions imposed to ensure the smooth and safe operation of the transportation network, including constructing required improvements, shall be carried out before the vacation ordinance is passed.
- (5) Conveying real property: If the conditions require the dedication of property, exchange of property, or the dedication of Right of Way, the petitioner shall convey the property before the vacation ordinance is passed. The petitioner shall convey property acceptable to the City and provide an acceptable deed form, title insurance, environmental site assessment and environmental remediation, perform any other review deemed necessary by the City, and pay any applicable taxes.
- (6) Conditions that extend beyond the development phase of the project: For conditions that will last for the life of the project such as public benefit requirements, areas to remain accessible to the public, or any other item deemed by the City to extend beyond the development phase, a Property Use and Development Agreement (PUDA), easement, or other binding mechanism acceptable to the City shall be required and recorded before the vacation ordinance is passed.
- (7) Payment of fees: All fees shall be paid before the vacation ordinance is passed. Any conditions that require the payment of funds shall occur before the vacation ordinance is passed.

In no circumstances will the City pass a final vacation ordinance without certainty about completing all required conditions and paying all required fees.

vii) Final Right of Way vacation

Once all conditions have been satisfied, Public Works will prepare and the Council will consider and pass a final Right of Way vacation ordinance granting control of the Right of Way to the abutting property owners.

Unless otherwise stipulated in the Petition, when more than one party owns property abutting the Right of Way, the Right of Way will be divided so that each side of the Right of Way receives the part of the Right of Way closest to their property.

viii) Costs and Fees

The costs and fees associated with a vacation are established in the City of Federal Way fee schedule. The petitioner is responsible for preparing and providing information necessary to respond to City questions or concerns. Additional costs may include required mitigation measures and the costs associated with providing the public benefit.

To protect the integrity of the legislative Right of Way vacation review process, a notarized statement shall be signed by the petitioner and included in the petition for the proposed vacation. The statement shall indicate that the petitioner acknowledges that the vacation petition may be subsequently denied at the Council's discretion; and that any financial commitment the petitioner has made before vacation approval is at their own risk and will not be a factor in the Council's decision on the proposed Right of Way vacation.