ORDINANCE NO. 18-0529

AN ORDINANCE OF EDGEOOD, WASHINGTON, RELATING TO VACATION OF STREETS, ALLEYS, PUBLIC PLACES OR PORTIONS THEREOF, DESCRIBING THE PETITIONING AND PUBLIC NOTICING PROCESS FOR A STREET VACATION, REQUIRING AN APPRAISAL, LISTING THE FACTORS TO BE CONSIDERED BY THE COUNCIL IN THE DECISION TO VACATE, DESCRIBING THE PROCEDURE FOR THE PUBLIC HEARING, THE CONDITIONS THAT MAY BE PLACED ON A VACATION, THE METHOD OF DETERMINING COMPENSATION FOR VACATIONS, DESCRIBING THE LIMITATIONS ASSOCIATED WITH VACATIONS OF WATERFRONT STREETS, RECORDING OF THE VACATION ORDINANCE, INCLUDING A PROCESS FOR VACATIONS OF STREETS SUBJECT TO THE NON-USER STATUTE, REPEALING SECTION 12.05.015 AND ADDING A NEW CHAPTER 12.14 TO THE EDGEOOD MUNICIPAL CODE.

WHEREAS, the effect of the dedication to the public of street in plats is to grant an easement for purposes of public travel (RCW 58.08.050, 58.08.015, Burmeister v. Howard, 1 Wash. Terr. 207 (1867)); and

WHEREAS, owners of an interest in real estate abutting a street or alley that has been dedicated in this manner may petition the City Council to vacate the easement for public travel (chapter 35.79 RCW); and

WHEREAS, streets platted in a county between 1890 and 1904, but not opened or improved by 1904 may be subject to the "non-user statute" (Laws of 1889, Ch. 19, Sec. 32, p. 603 (1890); Laws of 1909, Ch. 90, Sec. 1, p. 189, repealed in 1937 by Laws of 1937, Ch. 1987, Sec. 52, p. 761) which, in some instances, vacates the street by operation of law; and

WHEREAS, the City desires to establish a process for street vacations to conform with state law and also to include a procedure to remove the cloud on title for streets subject to the Non-user Statute; and

WHEREAS, the City’s existing code adopts the general provisions in state law applicable to street vacations for cities (EMC Section 12.05.015), but without any procedures for implementation; and

WHEREAS, the City adopted “any and all implementing administrative rules and enforcement remedies now in effect” in Pierce County Title 12, which are no longer necessary for the vacation of streets, alleys, public places or portions thereof upon the adoption of this code amendment; and
WHEREAS, the SEPA Responsible Official has determined that this Ordinance is categorically exempt under SEPA, WAC 197-11-800(19) as relating solely to governmental procedures and containing no substantive standards respecting use or modification of the environment; and

WHEREAS, the City Council considered this ordinance during its regular meeting of August 28, 2018; Now, Therefore,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Edgewood Municipal Code (EMC) Section 12.05.015 is hereby repealed.

Section 2. A new Chapter 12.14 is hereby added to the EMC, which shall read as follows:

CHAPTER 12.14
STREET AND ALLEY VACATIONS.

Sections:

12.14.050 Processing of Petition or Council Resolution
12.14.100 Use of Proceeds.


A. Who may file. The owners of an interest in real estate abutting upon any street, alley, public place or portion thereof created by easement may petition the City Council for a vacation of such area.

B. Elements of Petition. The petition shall include a description of the property to be vacated, as prepared by a licensed surveyor. In addition, the petitioners shall provide evidence that the public has an easement upon such street or alley (and that the property is not owned in fee by the City). A nonrefundable fee, as established by the City Council (in its fee resolution) must also be submitted for the purpose of defraying the administrative costs associated with the processing of the vacation petitions. This fee is also applicable to petitions under the Non-user Statute (Section 12.14.050(B)).
C. **Where to file Petition.** The petition shall be filed with the City Clerk, who shall confirm that it is signed by the owners of more than two-thirds of the property abutting upon the part of the street or alley to be vacated.

D. **Date set for hearing.** If the petition meets the requirements of Subsection 12.14.010(B) and (C) above, it shall be placed on the Council Agenda. The City Council shall adopt a Resolution fixing a time for a public hearing, when the petition will be considered by the Council in a public hearing, as described in Section 12.14.060. The date set for the public hearing shall not be more than sixty (60) days nor less than twenty (20) days after the date of the passage of the Resolution.

E. **Notice to Public of Public Hearing.**

1. **Posting of Notice.** After the Council passes the Resolution, the City Clerk shall post written notice of the public hearing on the City website and in three of the most public places in the City. In addition, this notice shall be posted in a conspicuous place on the street or alley sought to be vacated.

2. **Content of Notice.** The notice shall contain: (1) a statement that a petition has been filed to vacate the street or alley (or portion thereof) described in the notice; (2) a description of the part of the street or alley to be vacated; (3) identification of the petitioners; (4) a statement of the time and place fixed for the hearing of the petition; (5) a statement that public testimony is allowed at the hearing and that anyone objecting to the proposed vacation should attend the public hearing or submit written testimony to the City Council indicating his or her objection prior to the hearing; (6) a statement that the vacation and hearing will proceed in the manner described in this Chapter 12.14; and (7) a statement that the area proposed for vacation is public access.

**12.14.020 Vacation Initiated by Council Resolution.**

A. **Council Initiated.** The City Council may propose a vacation of a street, alley, public place or portion thereof, by Council Resolution.

B. **Elements of Resolution.** The Council’s Resolution shall describe the purpose for the proposed vacation, the date fixed for the public hearing on the proposed vacation and shall state whether the abutting property owners shall be required to make payment to the City for the vacation.

C. **Fees and Compensation.** The Council may initiate a vacation that does not require the abutting property owners to make payment to the City for the City’s administrative costs and/or compensation for the area vacated, where:

1. The street, alley or public place was not acquired at public expense;

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1 RCW 35.79.020.
2. After a review of the Transportation Element of the City’s Comprehensive Plan, the City Council determines that the street, alley or public place is not needed for public travel now or in the foreseeable future; and

3. The City’s maintenance or upkeep of the street, alley or public place is unrelated to any use of the street, alley, or public place for public travel.

D. Date of Public Hearing. The date set for hearing on the proposed vacation shall not be more than sixty (60) days nor less than twenty (20) days after the date of the passage of the Resolution.

E. Notice to Public of Public Hearing. After the Council passes the Resolution, the City Clerk shall provide notice of the public hearing as described in Section 12.05.010(D). In addition, the City Clerk shall send out mailed notice at least fifteen (15) days prior to the date fixed for the hearing. This mailed notice shall be sent to the owners or reputed owners of all lots, tracts or parcels of land or other property abutting upon any street or alley or any part thereof sought to be vacated, as these property owners are identified and their addresses are shown on the rolls of the county treasurer.

12.14.030 Appraisals. This Section applies when the Council passes a Resolution under the circumstances described in Section 12.14.010 and when the Council initiates a street vacation by Resolution under Section 12.14.020 (and does not require the payment of fees or compensation, pursuant to Section 12.14.020(C)). It does not apply to vacation petitions that have been determined to be subject to the Non-user Statute (Section 12.14.050(B) and 12.14.070(E)).

A. Appraisal Fee. After the City Council passes the Resolution setting the date for a public hearing, the petitioner(s) or abutting property owner(s) shall deposit sufficient funds to cover the City’s estimated cost of a full appraisal of the street, alley, public place or portion thereof to be vacated. The appraisal shall determine the value of the property after vacation (or after the removal of the public’s easement for travel, taking into account any easement that the City may require under Section 12.14.060(B)(3) as a condition of the vacation).

B. Difference in Appraisal Cost. In the event that the appraisal cost is less than the amount deposited, the compensation paid by the petitioner to the City shall be reduced by the difference between the deposit and the actual cost, or, in the alternative, such difference shall be refunded. In the event the actual cost of the appraisal is more than the amount deposited, the compensation payable to the City by the petitioner shall be increased by the difference between the deposit and the actual appraisal cost.

C. Exchanges of Right-of-way. The City is also authorized to obtain appraisals from qualified, independent real estate appraisers for the fair market value of alternate right-of-way land proposed by petitioners to be granted or dedicated to the City in lieu of a cash payment, as described in Section 12.14.070. For appraisals of alternate right-of-way land, an additional appraisal deposit fee shall be paid for the appraisal of such property.
12.14.040 **Objections — Prohibition on Further Proceedings.** If, prior to the public hearing, written objections are filed with the City by fifty (50) percent of the owners of property abutting the street, alley, public place or portion thereof subject to the vacation petition or Council Resolution for vacation, the City is prohibited from proceeding with the vacation.

12.14.050 **Processing of Petition or Council Resolution.**

A. **Staff Report.** Prior to the public hearing, the staff shall prepare a report and recommendation on the proposed vacation to the City Council, which shall include:

1. The history of private and public use of the area sought to be vacated, including the type of use (pedestrian, vehicular, etc.) and length of time such use has occurred;

2. A description of the manner in which the area sought to be vacated was acquired (whether by dedication, public expense, etc.);

3. A physical description of the street or alley area sought to be vacated, whether the right-of-way is improved, whether there are sidewalks, curbs, gutters, etc.

4. A description of all utilities or other public services that currently utilize the area sought to be vacated, whether by easement or otherwise;

5. The staff’s recommendation on the functionality of the area sought to be vacated for public purposes;

6. Identification of any references to any planning document, such as the City’s Comprehensive Plan, the Transportation Element of the Comprehensive plan, the 6-Year Road Plan or the Capital Facilities Element of the Comprehensive Plan that mention the area sought to be vacated for any purpose;

7. The staff’s recommendation whether the area sought to be vacated will be needed in the future as part of the City’s transportation system (pedestrian, bicycle or vehicular) or for utility access, and any other matters pertinent to future use;

8. The staff’s recommendation on the compensation to be paid to the City, considering the factors identified in Section 12.14.070; and

9. A statement that the street vacation is exempt from SEPA under WAC 197-11-800(2)(i).

10. If the area proposed to be vacated abuts a body of fresh or salt water, the procedures in Section 12.14.080 shall be followed.
B. **Non-user Statute.** For those petitions involving a vacation of a portion or all of a street or alley subject to 1889-90 Laws of Washington, Chapter 19, Section 32 (non-user statute), the City staff report shall include an analysis of the pertinent facts to demonstrate that the street or alley is subject to the non-user statute, as well as a description of the use(s) that has been made of the street or alley since operation of the statute. The City Attorney shall identify any annexation, adverse possession or prescriptive easement issues that may prevent the Council’s granting of the proposed street vacation.

C. **No Deadline for Council Decision.** Street vacations are not subject to project permit processing requirement in RCW 36.70B.080 which imposes a deadline on the issuance of a final decision. RCW 36.70B.140(1).

**12.14.060 Public Hearing.**

A. **City Clerk.** The City Clerk shall enter all of the written comments received on the proposed vacation into the record, and shall specifically identify any objections received from abutting property owners.

B. **Council action.** The City Council shall hold a public hearing on the proposed vacation and shall:

1. Consider the written recommendations of staff, abutters, the public and all testimony provided at the hearing;

2. Determine whether compensation must be paid to the City under the factors set forth in Section 12.14.070, and the amount of such compensation;

3. Decide whether any conditions should be imposed on the vacation, such as the retention of an easement or the right to exercise and grant easements with respect to the vacated land for the construction, repair and maintenance of public utilities and services; and

4. Determine whether the public interest is served by such vacation.

C. **Findings and Conclusions.** The City Council shall adopt written findings and conclusions in support of its decision to either grant the vacation, grant it with conditions or deny it.

D. **Final Decision/Ordinance.** If the City Council decides to grant a vacation petition, the Ordinance granting such vacation shall provide that it shall not become effective until the owners of property abutting upon the street or alley, or part thereof so vacated, shall compensate the City for such vacation as calculated under Section 12.14.070 or 12.14.080(C). There is no administrative appeal of the City Council’s decision.
12.14.070 Compensation. Ordinances vacating any street, alley, public place or portion thereof shall not be adopted by the City Council until the Council determines the amount of compensation to be paid to the City based on the factors set forth below:

A. If the street, alley, public place or portion thereof has not been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property to be vacated was not acquired at public expense, the owners of property abutting the street shall compensate the City in an amount that does not exceed one-half of the appraised value of the street.

B. If the street, alley, public place or portion thereof has been part of a dedicated public right-of-way for twenty-five years or more, or if the subject property to be vacated was acquired at public expense, the City may require the owners of the property abutting the street to compensate the City in an amount that does not exceed the full appraised value of the area vacated.

C. The full fair market value, as shown on the appraisal, shall be paid upon vacation of any streets, alleys or public places abutting upon bodies of water, as provided in Section 12.14.080.

D. In-Lieu Transfers of Property. Conveyances of other property acceptable to the City may be made in lieu of the payment required by this Section, whether required to mitigate adverse impacts of the vacation or otherwise. When such a transfer is proposed for street purposes, the value of the property (as determined in subsections A, B or C above shall be credited to the required payment. When the value of the in-lieu parcel is less than the payment required by subsection A, B or C of this Section, the petition shall pay the difference to the City. When the value of the in-lieu parcel exceeds the payment required by subsections A, B or C of this Section, the City shall pay the difference to the petitioner. In addition, the petitioner shall be responsible for all costs associated with this transfer, in the same manner as a property purchase, including but not limited to, title insurance, attorney review of the title, hazardous materials/waste testing, etc.

E. Vacations of Streets subject to 1889-90 Laws of Washington, Chapter 19, Section 32 (non-user statute). The City Council’s adoption of a vacation ordinance for those streets and alleys subject to the 1889-1890 Laws of Washington, Chapter 19, Section 32 (non-user statute) shall not require compensation by the abutting owners. However, the property owners initiating such vacation shall pay the City’s administrative fees relating to research and processing of the vacation request.


A. The City shall not vacate any street or alley if any portion of the street or alley abuts a body of fresh or salt water unless:
1. The vacation is sought to enable the City to acquire the property for port purposes, beach or water access purposes, boat moorage or launching sites, park, public view, recreation, or educational purposes, or other public uses;

2. The City Council adopts an Ordinance which declares that the street or alley is not presently being used as a street or alley and that the street or alley is not suitable for any of the following purposes: Port, beach or water access, boat moorage, launching sites, park, public view, recreation or education; or

3. The vacation is sought to enable the City to implement a plan, adopted by resolution or ordinance, that provides a comparable or improved public access to the same shoreline area to which the streets or alleys sought to be vacated abut, had the properties included in the plan not been vacated.

B. Before adopting an Ordinance vacating a street or alley under subsection (A)(2) of this Section, the City shall:

1. Compile an inventory of all rights-of-way within the City that abut the same body of water that is abutted by the street or alley sought to be vacated;

2. Conduct a study to determine if the street or alley to be vacated is suitable for use by the City for any of the following purposes: Port, boat moorage, launching sites, beach or water access, park, public view, recreation or education;

3. Notice the public hearing as required by Section 12.14.010(E), and hold a public hearing on the proposed vacation in the manner required by Section 12.14.060; and

4. Make a finding that the street or alley sought to be vacated is not suitable for any of the purposes listed under B(2) of this subsection, and that the vacation is in the public interest.

C. No vacation shall be effective until the fair market value has been paid for the street or alley or portion thereof to be vacated.

12.14.090 Recording. Posting and mailing of the notices described in this Chapter shall be the responsibility of the City Clerk. As required by RCW 35.79.030, a certified copy of the Ordinance vacating the street, alley, public place or portion thereof shall be recorded by the City Clerk with the Office of the Pierce County Records and Elections (or County Auditor), after all fees and the compensation for the value of the property, as determined by the Council in the vacation Ordinance, have been paid to the City.

12.14.100 Use of Proceeds.

A. Non-waterfront streets and alleys. One-half of the revenue received by the City as compensation for the area vacated must be dedicated to the acquisition, improvement,
development and related maintenance of public open space or transportation capital improvements in the City.

B. Waterfront streets and alleys. Monies received from the vacation may be used by the City only for acquiring additional beach or water access, acquiring additional public view sites to a body of water, or acquiring additional moorage or launching sites.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional or unlawful by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 5. Effective Date. This Ordinance shall take effect and be in full force and effect five days after publication, as provided by law.

PASSED BY THE CITY COUNCIL ON THE 28TH DAY OF AUGUST, 2018

Daryl Badinger, Mayor

AUTHENTICATED:

Rachel Pitzel, City Clerk.

APPROVED AS TO FORM:
Office of the City Attorney

Carol Morris, City Attorney

PUBLISHED: 08/30/18
EFFECTIVE DATE: 09/04/18