

ORDINANCE NO. 2018-_____

AN ORDINANCE relating to land use; vacating a portion Roosevelt Ave. right-of-way that extends east of 18th Ave to the Powerhouse Canal Trail in the City of Yakima, Washington.

WHEREAS, by petition dated October 27, 2017 (Petition #17-08), Ken Nass, requested to vacate a portion of platted City of Yakima right-of-way more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference; and

WHEREAS, the City of Yakima has no future plans for development of this paved, platted street right-of-way; and

WHEREAS, the applicants/petitioners for this right-of-way vacation, own more than the necessary two thirds of the parcels abutting the property subject to this petition for vacation; and

WHEREAS, on December 11, 2017, the City of Yakima Planning Division issued a Notice of Petition and Public Hearing in accordance with YMC § 16.05.050, no written comments were received during the 20 day public comment period; and

WHEREAS, on January 25, 2018, and continued to February 8, 2018, the Hearing Examiner for the City of Yakima conducted an open-record public hearing regarding the requested right-of-way vacation, no comments were received during the open record public hearing; and

WHEREAS, on February 23, 2018, the Hearing Examiner issued Hearing Examiner's Recommendation regarding RWV#001-17, (the "recommendation") recommending that the platted street right-of-way be vacated, and said recommendation is attached hereto and incorporated herein by this reference as Exhibit "B"; and

WHEREAS, at an open-record public hearing held on April 3, 2018, the City Council considered the requested right-of-way vacation, including the documents and other evidence which comprise the record developed before the Hearing Examiner, the Hearing Examiner's Recommendation, and the statements and comments of interested persons; and

WHEREAS, the City Council finds that the considerations of the Hearing Examiner in response to the requirements and criteria of RCW Chapter 35.79, together with the City of Yakima Chapter 14.21, are correct and appropriate, and that the same should be adopted by the City Council as its findings herein; and

WHEREAS, in accordance with YMC § 14.21.070(4), No compensation is required to be paid by the applicant to the City due to the fact the City has not purchased, maintained, or made any changes to the subject right-of-way; and

WHEREAS, the City Council finds that it is in the best interest of the City to enact the following to approve the requested right-of-way vacation; now, therefore

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. The portion of street to be vacated is located in the vicinity of Roosevelt Ave. and 18th Ave. in the City of Yakima, Washington, more particularly described in Exhibit "A", attached hereto and incorporated herein by this reference, is hereby vacated by the City of Yakima.

Section 2. The findings, conclusions and conditions within the February 23, 2018 Hearing Examiner's Recommendation (RWV#001-17) regarding this right-of-way vacation are hereby adopted by the City Council as its findings, conclusions and conditions in support hereof, pursuant to YMC Chapter 14.21 and RCW Chapter 35.79, and are incorporated herein by this reference as if fully set forth herein.

Section 3. The right-of-way vacation granted by this ordinance is expressly conditioned on the applicant's satisfaction of the following conditions, as stated on pages 11 and 12 of the Hearing Examiner's Recommendation:

1. Public access and utility easements shall be reserved for a City sanitary sewer line and for a City storm water drainage line within the street right-of-way area proposed for vacation which shall be 20 feet wide or of a width otherwise determined to be necessary by the City Engineer pursuant to YMC Chapter 12.02 and YMC § 14321.060.
2. A 20-foot-wide access easement shall be reserved and recorded for access by delivery vehicles for business purposes to the rear of the building at 1702 Englewood Avenue.
3. The portion of Roosevelt Avenue right-of-way requested by the petition shall be vacated, and the petitioners shall provide a new legal description and survey required by YMC § 14.21.110.
4. Upon vacation, the vacated right-of-way shall have the Comprehensive Plan designation of Industrial and the zoning classification of Light Industrial (M-1).

Section 4. Severability: If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional for any reason, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 5. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter, and the vacation approved herein shall be effective upon recording with the Yakima County Auditor.

PASSED BY THE CITY COUNCIL at a regular meeting and signed and approved this 3rd day of April, 2018.

ATTEST:

Kathy Coffey, Mayor

Sonya Claar Tee, City Clerk

Publication Date:_____

Effective Date:_____

Exhibit "A"

RECEIVED

OCT 27 2017

CITY OF YAKIMA
PLANNING DIV.

PETITION NO. 17-08
CITY OF YAKIMA, WASHINGTON
PETITION TO VACATE STREET OR ALLEY

RECEIVED

OCT 30 12:57

To the City Council of the City of Yakima, Washington,

Comes now the undersigned petitioners and, pursuant to RCW Chapter 35.79, now respectfully show:

YAKIMA CITY CLERK

The undersigned petitioners request that the following described street, alley or portion thereof, located in the City of Yakima, be vacated pursuant to RCW 35.79 (*provide legal description below, or attach to petition if lengthy*).

Each of the undersigned petitioners is the owner of an interest in real estate abutting on the above-described area. The undersigned petitioners constitute owners of more than two-thirds of said abutting property.

Wherefore, petitioners pray that proceedings be heard hereon for the vacation of said area in the manner prescribed by RCW Ch. 35.79.

<u>18th Ave Properties</u>	<u>509 N. 18th Ave</u>	
Owner	Address	
<u>K. M.</u>	<u>10/25-17</u>	<u>50</u>
Signature	Date	Ownership %

<u>All Weather Storage</u>	<u>1710 Englewood Ave</u>	
Owner	Address	
<u>Steve M. Black</u>	<u>10/26/2017</u>	<u>40</u>
Signature	Date	Ownership %

Owner	Address	
Signature	Date	Ownership %

(If there are more property owners than what is room for please attach a separate list of property owners abutting the right-of-way to be vacated as well as their address, percentage of frontage on the right-of-way, and signature with date and the total ownership percentage of the property owners participating in this vacation)

Revised 01/2017

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DOC.

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Exhibit "B"

**City of Yakima, Washington
Hearing Examiner's Recommendation**

February 23, 2018

In the Matter of an Application/Petition	)	
for Vacation of Street Right-of-Way	)	
Submitted by:	)	RWV#001-17
	)	Petition No. 17-08
18th Ave Properties LLC	)	Resolution No. R-2017-148
And Steven and Kathy Clark	)	
	)	
To Vacate a Portion of Roosevelt Avenue	)	
Street Right-of-Way between North 18th	)	
Avenue and the Powerhouse Canal Trail	)	

A. Introduction. Introductory findings relative to the open record public hearing process for this requested street right-of-way vacation for a portion of Roosevelt Avenue east of North 18th Avenue may be summarized as follows:

(1) The Hearing Examiner conducted an open record public hearing for this application/petition which began on January 25, 2018, and which was completed on February 8, 2018.

(2) Associate Planner Eric Crowell presented the Planning Division staff report which was prepared by Associate Planner Trevor Martin and which recommended approval of the requested street right-of-way vacation subject to conditions.

Ave Properties LLC and the 50-foot-wide right-of-way area proposed for vacation which abuts the north boundary of the property owned by 18th Ave Properties LLC.

(8) No one other than Mr. Nass and Mr. Shafer appeared to testify at the January 25, 2018, hearing relative to this petition. Since State law provides that any vacated street right-of-way shall belong to the abutting owners on each side, one half to each, and since reservation of an access easement was being recommended for the rear roll up doors of a building that would otherwise be denied access to a street, the Hearing Examiner continued the hearing to February 8, 2018, at 9:00 a.m. in order to allow Mr. Nass more time to arrange for formal instruments to obtain the Clark property and an agreement as to limitations on the times for utilizing the access easement. The continuance was noted on the record and posted at the entrance to the hearing room.

(9) A written comment dated February 5, 2018, was received from Mr. Nass indicating that he had spoken with the representative of the property at 1702 Englewood Avenue and that they had reached a private agreement between themselves regarding the times for using the access easement and therefore wished to rescind the previous request for limitations imposed by the City in that regard.

(10) The hearing concluded on February 8, 2018, with comments relative to the need for Mr. Nass to have formal written instruments and perhaps the City's approval of a boundary line adjustment for his agreements with the other abutting property owners.

(11) This street right-of-way vacation recommendation is being submitted within ten business days of the conclusion of the open record public hearing on February 8, 2018.

B. Summary of Recommendation. The Hearing Examiner recommends that the Yakima City Council approve this request to vacate a portion of Roosevelt Avenue street right-of-way from North 18th Avenue easterly to the Powerhouse Canal Trail, subject to conditions.

C. Basis for Recommendation. Based upon his view of the site without anyone else

present on January 20, 2018; the staff report, exhibits, testimony and evidence presented at an open record public hearing beginning on January 25, 2018, and concluding on February 8, 2018; and a review of the State of Washington street right-of-way vacation provisions in Chapter 35.79 of the Revised Code of Washington and the City of Yakima street right-of-way vacation provisions in Chapter 14.21 of the Yakima Municipal Code; the Hearing Examiner makes the following:

FINDINGS

I. Applicants, Petitioners and Property Owners. The applicants, petitioners and property owners are: (1) 18th Ave Properties LLC as to the property abutting the area proposed for vacation on the south, which is about 50% of the abutting property; and (2) Steven Clark and Kathy Clark who own about 40% of the property abutting the area of the proposed vacation on the north. The owner of about 10% of the property abutting the easternmost area of the proposed vacation on the north side, Prodigy 3 LLC, is not an applicant or petitioner for this street right-of-way vacation.

II. Description of Right-of-Way Vacation Request. The main aspects of this street right-of-way vacation request may be summarized as follows:

(1) This is a request to vacate the portion of Roosevelt Avenue street right-of-way between North 18th Avenue and the Powerhouse Canal Trail easterly thereof. The petition was received on October 27, 2017.

(2) The stated purpose for the request is to allow the area to be utilized by adjacent businesses for parking and to provide additional tax revenue for the City. The

legal description and site plan are included in the City Planning Division File No. RWV#001-17.

(3) The parcels that abut the portion of street right-of-way proposed for vacation are Assessor's Tax Parcel Numbers 181323-11509 and 181323-11510 on the south and 181323-11412, 181323-11519 and 181323-11526 on the north.

(4) The applicants and petitioners are the owners of about 90% of the property abutting the area proposed for vacation.

(5) The portion of Roosevelt Avenue street right-of-way proposed for vacation between North 18th Avenue and the Powerhouse Canal Trail is 50 feet wide until it tapers to a point where it abuts the Powerhouse Canal Trail on the east.

(6) City of Yakima records indicate that the subject right-of-way was originally dedicated to Yakima County by the Plat of McGlothern Home Sites No. 6 on June 28, 1946. It was subsequently annexed to the City of Yakima on May 1, 1998. It has no curb, gutter or sidewalks. No record was found of any expenditure of public funds for maintenance or improvement of the area proposed for vacation.

III. Notices. Notice of the hearing was given on December 5, 2017, when the City Council adopted Resolution No. R-2017-148 setting the hearing for January 25, 2018, and was also subsequently given more than twenty days before the hearing in the manner required by RCW 35.79.020 and in additional ways on the following dates:

Posting of notice on the property:	December 8, 2017
Publishing of notice in the Yakima Herald-Republic:	December 11, 2017
Mailing of notice to the property owners within 300 feet:	December 11, 2017
Posting of notice in three public places:	December 13, 2017

IV. Hearing Examiner Jurisdiction. The Yakima Municipal Code provides in Sub-section 1.43.080(H) that the Hearing Examiner shall conduct public hearings on petitions and resolutions to vacate streets and public rights-of-way pursuant to RCW Chapter

35.79 and that decisions of the Hearing Examiner on such matters shall constitute recommendations to the Yakima City Council.

V. Environmental Review. Street vacations are categorically exempt from State Environmental Policy Act (SEPA) review per WAC 197-11-800(2)(i) and Chapter 6.88 of the Yakima Municipal Code.

VI. Traffic Study. The City Traffic Engineer has determined that a traffic study is not required for this street right-of-way vacation request.

VII. Comprehensive Plan. Street rights-of-way do not have a Comprehensive Plan designation. Upon approval of street right-of-way vacations, the vacated areas receive the Comprehensive Plan designation of the abutting properties. The Yakima Urban Area Comprehensive Plan designates all of the property abutting the area to be vacated as Industrial. If the City Council approves the requested street right-of-way vacation, the Comprehensive Plan designation of the vacated property will be Industrial.

VIII. Zoning/Land Uses. Street rights-of-way do not have a zoning classification. Upon approval of street right-of-way vacations, the vacated areas receive the zoning classification of the abutting properties in accordance with the final provision contained within YMC §15.22.060. All of the property abutting the area to be vacated has the Light Industrial (M-1) zoning classification. If the City Council approves the requested street right-of-way vacation, the zoning of the vacated area will be Light Industrial (M-1). The

properties near the area to be vacated have the following zoning and land uses:

<u>Direction</u>	<u>Zoning</u>	<u>Land Use</u>
North	M-1	Storage Units/Warehouse
South	M-1	Storage Units/Offices
East	M-1	Powerhouse Canal Trail
West	M-1	Storage Units/Residences

IX. Development Services Team. The City's Development Services Team (DST) met on November 21, 2017. No City divisions indicated any plans for improvements to the portion of Roosevelt Avenue right-of-way proposed for vacation, and a review of City records did not disclose the expenditure of any public funds for its maintenance or improvement. The following DST comments were received:

(1) Sewer: An easement shall be reserved by the City for the existing sanitary sewer line that drains east to west through the area to be vacated. No construction shall be allowed over the sanitary sewer line or its easement. The petitioners shall provide a recording indicating the location of the sewer line along with the easement area to be reserved by the City.

(2) Storm Water: There is a City of Yakima drain line running underneath this parcel. No construction will be allowed over the drain line or its easement. If the petitioners wish to move the drain line, they will have to do so at their own expense after first submitting engineered plans to the Surface Water Engineer for review and approval. These plans must be done by a licensed engineer from Washington State.

X. Criteria for the Vacation of Street Right-of-Way. The following five criteria which are set forth in YMC §14.21.050 are considered in determining the propriety and requisites of street right-of-way vacations:

(1) The public benefit, reason for, and limitations of the proposed right-of-way vacation. The public benefit that would result from the proposed right-of-way vacation would be to relieve the City from ever having to maintain a short portion of a 50-foot-wide street right-of-way which dead ends at the Powerhouse Canal Trail; which has insufficient width for traffic to turn around; which has been privately fenced and gated to prevent public use since the 1990s; and which could become a nuisance to the detriment of adjacent properties if it were opened for public use. The reason for the requested street vacation expressed by 18th Ave Properties LLC is to allow the use of the area by adjacent businesses for parking and to provide tax revenue for the City. It would also dispense with the need for petitioners to obtain an annual encroachment permit for the encroachment of the fence across the right-of-way. The proposed right-of-way vacation would be limited to the Roosevelt Avenue street right-of-way between North 18th Avenue and the Powerhouse Canal Trail and would be subject to easements for access to a parcel on the east end of the area to be vacated and for a sewer line and a storm water drainage line within the area to be vacated.

(2) Whether the vacation of right-of-way would deny sole access to a public street or alley for any property. The requested street right-of-way vacation would not deny sole access to a public street or alley for any property because all abutting parcels to the south and to the north of the area proposed for vacation have access to either Englewood Avenue or North 18th Avenue. However, it would deny sole access to a street for the pull up doors in the rear of the building at 1702 Englewood Avenue. In response to the written comment from Matthew Sevigny, the staff report recommended that an access easement over the north 20 feet of the area to be vacated be reserved for business access to the roll up doors in the rear of the building on Assessor's Tax Parcel No. 181323-11526 owned by Prodigy 3 LLC which is located on the north side of the east end of the area proposed for vacation. His comment indicated that this portion of the Roosevelt Avenue street right-of-way has been used for deliveries and access to the rear of the building on that parcel for more than 30 years even though its primary access and frontage is at 1702 Englewood Avenue. Since Petitioner Ken Nass had requested specific restrictions on the manner of using the recommended access easement to that parcel, the hearing was continued from January 25th to February 8th for him to discuss restrictions on access with the owner of the property. Mr. Nass thereafter indicated by an email of February 5, 2018, that he and a representative of the owner of the 1702 Englewood Avenue parcel had reached a private agreement between themselves regarding the times

of accessibility for use of the reserved access easement and wished to rescind the previous request that the City impose limitations regarding same.

(3) Whether the proposal is consistent with existing plans of the city, such as the six-year transportation improvement plan, the urban area comprehensive plan or other official city plans and policies. Neither the City's current Transportation Improvement Plan (TIP) nor any other City plans or policies contain any plans to improve the right-of-way area that is proposed for vacation.

(4) Whether the vacation is appropriate with existing and anticipated zoning and land use. The existing and anticipated future zoning of the nearby area is Light Industrial (M-1) which will not be affected by the requested street vacation. The existing and anticipated land uses of the nearby area which are Light Industrial land uses will be benefited by the requested street vacation because it will allow adjacent businesses to use the vacated area for parking without having to obtain annual encroachment permits from the City for the existing fence which is an encroachment across the public right-of-way.

(5) Whether there are any public or franchised utilities in the right-of-way to be vacated and, if so, whether they will be relocated, or whether an easement will need to be reserved. The City of Yakima Storm Water and Wastewater Divisions have indicated that easements need to be reserved for a City sanitary sewer line and for a City storm water drainage line within the street right-of-way area proposed for vacation. They will need to be 20 feet wide or of a width that is otherwise determined to be necessary by the City Engineer pursuant to YMC Chapter 12.02. Such easements are required to be reserved by the City pursuant to YMC §14.21.060.

XI. Compensation to the City. YMC §14.21.070(4) exempts the petitioners for this street vacation from having to pay compensation to the City for the vacated property because of the following circumstances which are all present in this situation:

“4. No compensation may be required if the city has not purchased, maintained, or made any improvements to the public right-of-way, there is no planned or anticipated public purpose existing for maintaining the public right-of-way as determined by the planning commission or development services team (DST), and

the public right-of-way has been a dedicated right-of-way in the city for at least five years.”

CONCLUSIONS

Based upon the foregoing Findings, the Hearing Examiner reaches the following Conclusions:

(1) The Hearing Examiner has jurisdiction and authority by virtue of Subsection 1.43.080(H) of the Yakima Municipal Code to conduct an open record public hearing regarding an application, petition and resolution to vacate a public street right-of-way area and to make a recommendation to the Yakima City Council relative thereto.

(2) All public notice requirements for vacation of a portion of street right-of-way have been completed in accordance with applicable statutes and ordinances.

(3) SEPA review was not required because street right-of-way vacations are categorically exempt from SEPA review.

(4) A traffic analysis is not required for the requested street right-of-way vacation.

(5) Since the petitioners own about 90% of the property abutting the portion of the Roosevelt Avenue street right-of-way area to be vacated, more than the requisite two-thirds of the owners abutting the area to be vacated signed the petition.

(6) The right-of-way to be vacated was dedicated to Yakima County by the Plat of McGlothern Home Sites No. 6 on June 28, 1946, and the area was annexed by the City of Yakima on May 1, 1998.

(7) The Yakima Urban Area Comprehensive Plan designates all of the property abutting the area to be vacated as Industrial which will become the designation of the vacated property.

(8) The Yakima Urban Area Zoning Ordinance classifies all of the property abutting the area to be vacated as within the Light Industrial (M-1) zoning district which will become the zoning classification of the vacated property.

(9) No properties would be denied sole access to the public street system as a result of this right-of-way vacation since all parcels will have frontage on a public street. But it is recommended that an easement be reserved for business deliveries to the roll up doors in the rear of the building located at the east end of the north side of the area proposed for vacation, even though it has primary access to a street at 1702 Englewood Avenue, because of the hardship involved in eliminating the historical use of the street right-of-way for business deliveries to the rear of that building for more than 30 years.

(10) This request for street right-of-way vacation would not conflict with any planned street improvement projects or other City plans or policies.

(11) No testimony or written comments were submitted in opposition to the requested street right-of-way vacation.

(12) The requested street right-of-way vacation would not affect any public or franchised utility lines because easements will be established for the City sanitary sewer line and the City Storm Water drainage line in the area to be vacated.

(13) The requirements of RCW 35.79 and the City's five criteria governing the approval of public street right-of-way vacations have all been satisfied.

(14) YMC §14.21.070(4) provides that compensation to the City is not required for the area to be vacated.

(15) RCW 35.79.040 and YMC §14.21.080(2) provide that the vacated street right-of-way shall belong to the abutting property owners, one-half to each.

RECOMMENDATION

The Hearing Examiner recommends to the Yakima City Council that the portion of Roosevelt Avenue street right-of-way lying between North 18th Avenue and the Powerhouse Canal Trail easterly thereof as described in RWV#001-17, in Petition No. 17-08 and in Resolution No. R-2017-148 should be vacated so that the vacated area will belong to the abutting owners on each side, one-half to each, subject to the following conditions:

18th Ave Properties LLC
And Steven and Kathy Clark
Street Right-of-Way Vacation
Portion of Roosevelt Avenue
RWV#001-17; Petition No. 17-08

(1) Public access and utility easements shall be reserved for a City sanitary sewer line and for a City storm water drainage line within the street right-of-way area proposed for vacation which shall be 20 feet wide or of a width otherwise determined to be necessary by the City Engineer pursuant to YMC Chapter 12.02 and YMC §14.21.060.

(2) A 20-foot-wide access easement shall be reserved and recorded for access by delivery vehicles for business purposes to the rear of the building at 1702 Englewood Avenue.

(3) The portion of Roosevelt Avenue right-of-way requested by the petition shall be vacated, and the petitioners shall provide the new legal description and survey required by YMC §14.21.110.

(4) Upon vacation, the vacated right-of-way shall have the Comprehensive Plan designation of Industrial and the zoning classification of Light Industrial (M-1).

DATED this 23rd day of February, 2018.



Gary M. Cuillier, Hearing Examiner