

ORDINANCE NO. 2020-

AN ORDINANCE relating to land use; vacating a public right-of-way, in an alleyway that extends west of N 6th Ave., south of Fruitvale Blvd., in the City of Yakima, Washington.

WHEREAS, by petition dated October 28, 2019 (Petition #19-12), Yakima Housing Authority, 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 unpaved, platted alleyway right-of-way; and

WHEREAS, The Yakima Housing Authority, the applicant/petitioner for this right-of-way vacation, own all parcels abutting the property subject to this petition for vacation; and

WHEREAS, on February 13, 2020, the Hearing Examiner for the City of Yakima conducted an open-record public hearing regarding the requested right-of-way vacation, and concluded the hearing on February 13, 2020; and

WHEREAS, on February 28, 2020, the Hearing Examiner issued the Hearing Examiner's Recommendation regarding RWV#001-19, (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 7, 2020, 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 street vacation policy (YMC Ch. 14.21), are correct and appropriate, and that the same should be adopted by the City Council as its findings herein; and

WHEREAS, compensation to the City is not necessary for this right-of-way vacation due to the City having not purchased, maintained, or made any improvements to the public right-of-way, has no plans to do so, and has been a dedicated public right-of-way for at least five years, in accordance with YMC § 14.21.070 (A) (4); 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 unimproved dead-end alley right-of-way beginning a short distance west of North 6th Avenue and extending westerly one parcel south of Fruitvale Boulevard between Assessor's Parcel Numbers 181313-31417, 31418, 31419, and 31513 on the north and Assessor's Parcel Number 181313-31514 on the south, 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 28, 2020 Hearing Examiner's Recommendation (RWV#001-19) regarding this right-of-way vacation are hereby adopted by the City Council as its findings, conclusions and conditions in support hereof, pursuant to City vacation policy 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 Yakima Housing Authority's satisfaction of the following conditions, as stated on page 10 of the Hearing Examiner's Recommendation:

1. The legal description of the vacated area shall be a ten (10)-foot-wide strip of land platted as an alley and shown on the Plat of Hathaway's Subdivision of Lots 31 and 32 of Hathaway's 5 Acre Tracts in Section 13, Township 13 North, Range 18 East, W.M., within Block 1, lying north of, parallel with and adjacent to Lots 8 and 9 of said subdivision; SUBJECT TO an easement for public utilities over and across the same ten (10)-foot-wide strip of land.
2. Upon vacation, the north five (5) feet of the vacated area shall have the zoning classification of General Commercial (GC) and the south five (5) feet of the vacated area shall have the zoning classification of Multi-Family Residential (R-3).
3. A detailed site plan shall be provided which accurately shows all existing utilities within the right-of-way to be vacated.
4. A public utility easement shall be maintained to provide access for operation, maintenance or replacement of the existing utilities systems and improvements thereto.

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. The City Clerk is hereby authorized and directed to file a certified copy of this ordinance with the Yakima County Auditor.

PASSED BY THE CITY COUNCIL, signed and approved this 7th day of April, 2020.

ATTEST:

Patricia Byers, Mayor

Sonya Claar Tee, City Clerk

Publication Date: _____

Effective Date: _____

Exhibit A
Petition and Legal Description

PETITION NO. 19-12
CITY OF YAKIMA, WASHINGTON
PETITION TO VACATE STREET OR ALLEY

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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:

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>Yakima Housing Authority</u>	<u>810 N. 6th Ave.</u>
Owner	Address
<u>[Signature]</u>	<u>10/28/2019</u>
Signature	Date
	<u>100</u>
	Ownership %

Owner	Address
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 4/2019

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VACATION OF ALLEYWAY

Proposed Description

A 10 foot strip of land platted as an alley and shown on the Plat of Hathaway's Subdivision of Lots 31 and 32 of Hathaway's 5 Acre Tracts in Section 13, Township 13 North, Range 18 East, W.M., within Block 1, lying north of, parallel with and adjacent to Lots 8, 9 and 10 of said subdivision;

SUBJECT TO an easement for public utilities over and across the same 10 foot strip of land.

Exhibit B
Hearing Examiner's Recommendation

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City of Yakima, Washington
Hearing Examiner's Recommendation

February 28, 2020

In the Matter of an Application/Petition	)	
for Vacation of Unimproved Alley	)	
Right-of-Way Submitted by:	)	RWV#001-19
	)	Petition No. 19-12
Yakima Housing Authority	)	Resolution No. R-2020-004
	)	
To Vacate a Portion of an Alley Right-of-	)	
Way Located West of North 6 th Avenue	)	
And South of Fruitvale Boulevard	)	

A. Introduction. Introductory findings relative to the hearing process for this matter may be summarized as follows:

(1) The Hearing Examiner conducted an open record public hearing for this application/petition on February 13, 2020.

(2) Community Development Specialist Colleda Monick presented the Planning Division staff report recommending approval of the requested alley right-of-way vacation.

(3) Nathan Poel, the Design Director for Yakima Housing Authority, testified in favor of the request by indicating that the applicant owns all of the property on both sides of the dead-end alley right-of-way proposed for vacation and that the requested vacation would facilitate future development of affordable housing by providing an additional area for parking even though permanent structures would not be allowed

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there due to the existence of a public utility easement over the entire right-of-way for an existing City public sanitary sewer mainline and an existing irrigation system mainline.

(4) No other testimony and no written public comments were submitted.

(5) This alley right-of-way vacation recommendation has been issued within ten business days of the hearing.

B. Summary of Recommendation. The Hearing Examiner recommends that the Yakima City Council approve this request to vacate the portion of an unimproved dead-end alley right-of-way beginning a short distance west of North 6th Avenue and extending westerly one parcel south of Fruitvale Boulevard between Assessor's Parcel Numbers 181313-31417, 31418, 31419 and 31513 on the north and Assessor's Parcel Number 181313-31514 on the south which are all owned by the Yakima Housing Authority, subject to conditions.

C. Basis for Recommendation. Based upon a view of the site without anyone else present on February 10, 2020; the staff report, exhibits, testimony and evidence presented at an open record public hearing on February 13, 2020; and a review of Chapter 35.79 of the Revised Code of Washington (RCW) and of the City of Yakima's public right-of-way vacation provisions in Chapter 14.21 of the Yakima Municipal Code (YMC); the Hearing Examiner makes the following:

FINDINGS

I. Applicant/Petitioner. The applicant/petitioner is Yakima Housing Authority, 810

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North 6th Avenue, Yakima, Washington 98902.

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

(1) On November 1, 2019, the City Department of Community Development received a petition from the Yakima Housing Authority for vacation of a portion of unimproved east-west dead-end alley right-of-way beginning a short distance west of the 800 block of North 6th Avenue that is 10 feet wide and runs parallel to the south side of Fruitvale Boulevard behind the parcels at 1112 and 606 Fruitvale Boulevard between Assessor's Parcel Numbers 181313-31417, 31418, 31419 and 31513 on the north and Assessor's Parcel Number 181313-31514 on the south which are all owned by the Yakima Housing Authority.

(2) The stated purpose for the request is to allow an area that is currently fenced off to be used for parking by the Yakima Housing Authority for its existing campus and to provide design flexibility for future development of its affordable housing. No permanent structures can be placed on the vacated area in the future due to the existence of a public utility easement located there. The portion of the alley extending west directly off of North 6th Avenue which is used to access two parcels adjacent to that street would not be vacated.

(3) RCW 35.79.040 and YMC §14.21.080(A)(1) provide that vacated property shall belong to the abutting owner(s) on each side, one-half to each. Here all of the vacated property would belong to the Yakima Housing Authority as the only abutting property owner.

III. Notices. Notice of the hearing was given on January 21, 2020, when the Yakima City Council adopted Resolution No. R-2020-004 setting the hearing for February 13, 2020, and was also subsequently given more than twenty days before the hearing in the manner required by RCW 35.79.020 and in the following additional ways on the following dates:

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Posting of notice on the property at the only access point:	December 18, 2019
Publishing of notice in the Yakima Herald-Republic:	January 22, 2020
Mailing of notice to the property owners within 300 feet:	January 22, 2020
Posting of notice in three public places:	January 22, 2020

IV. Hearing Examiner Jurisdiction. The Yakima Municipal Code provides in Subsection 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 or alley 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. Comprehensive Plan. Public rights-of-way do not have a Comprehensive Plan designation. Upon approval of street or alley right-of-way vacations, the vacated areas receive the Comprehensive Plan designation of the adjacent properties. The Yakima Urban Area Comprehensive Plan designates the property north of the area to be vacated to which the vacated area will accrue as Commercial Mixed Use and the property south of the area to be vacated to which the vacated area will accrue as Mixed Residential.

VII. Zoning and Land Uses. Pursuant to YMC §15.22.060(E) which provides that where a public right-of-way is vacated, the vacated area shall have the zoning district

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classification of the property to which it accrues, the zoning for the north five (5) feet of the vacated portion of the ten (10)-foot-wide unimproved alley right-of-way would be General Commercial (GC) and zoning for the south five (5) feet of the vacated portion of the ten (10)-foot-wide unimproved alley right-of-way would be Multi-Family Residential (R-3). 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	General Commercial (GC)	Commercial business, Vacant
South	Multi-Family Residential (R-3)	Office/Clinics
East	General Commercial (GC)	Automotive Dealership
	Multi-Family Residential (R-3)	Single-Family Dwellings
West	Multi-Family Residential (R-3)	Office/Clinics

VIII. Development Services Team. The Development Services Team meeting held on November 19, 2019, resulted in the following comments:

(1) Engineering: All City utilities – sewer, water and others – will require a utility easement per YMC Chapter 12.02 prior to vacation of right-of-way.

(2) Wastewater: There is an existing City sewer line in the proposed right-of-way to be vacated. If the right-of-way is vacated, there will need to be an easement recorded that meets YMC Title 12 requirements.

(3) Water/Irrigation: The site is within the City of Yakima's Fruitvale irrigation system service area. There is an existing three (3)-inch CI irrigation main with services in the alley along the extent of the proposed right-of-way vacation. A detailed site plan should be provided which accurately shows all existing utilities within the right-of-way to be vacated. A public utility easement shall be maintained to provide access for the City of Yakima's operation, maintenance and/or replacement of the existing irrigation system.

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IX. Criteria for the Vacation of Street Right-of-Way. The following five criteria set forth in YMC §14.21.050 are considered in determining the propriety and requisites of public 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 improve and maintain a portion of a dead-end alley right-of-way that is fenced and will never be of use to the City. The reason for the proposed right-of-way vacation is to allow the area to be used in connection with the Yakima Housing Authority's affordable housing purposes in the future. The limitations of the proposed right-of-way vacation would be the 10-foot-wide alley right-of-way west of North 6th Avenue between Assessor's Parcel Numbers 181313-31417, 31418, 31419 and 31513 on the north and Assessor's Parcel Number 181313-31514 on the south which are all owned by the Yakima Housing Authority.

(2) **Whether the vacation of right-of-way would deny sole access to a public street or alley for any property.** Vacation of the right-of-way involved in this request would not deny any property sole access to a public street or alley because all parcels surrounding the area to be vacated have access either to Fruitvale Boulevard or to North 6th Avenue.

(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.** The requested street vacation will be consistent with the City's plans because there are no plans for improvement of the subject 10-foot-wide unimproved dead-end alley right-of-way area in the City's Six Year Transportation Improvement Plan or in any of the City's other plans or policies. Nor did any of the City Divisions indicate at the Development Services Team meeting that the alley right-of-way area proposed for vacation would likely be improved by the City in the future.

(4) **Whether the vacation is appropriate with existing and anticipated zoning and land use.** The requested right-of-way vacation would not adversely affect any existing or anticipated development in the area. Upon vacation, title to the entire vacated area would vest in the sole abutting owner, the Yakima Housing Authority.

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Upon vacation, the north 5 feet of the vacated area would have the General Commercial (GC) zoning of the abutting property on the north, and the south 5 feet of the vacated area would have the Multi-Family Residential (R-3) zoning of the abutting property on the south.

(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. There are public utilities in the right-of-way to be vacated. There is a City sewer main and a City irrigation line with services that are located within a public utility easement that already exists over the entire area requested to be vacated.

X. Compensation to the City. YMC §14.21.070(A)(4) exempts the applicant/petitioner for this alley right-of-way 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.”

During the DST meeting, no City Divisions indicated that any future improvements were planned for the alley right-of-way involved in this request. This area was dedicated to the City of Yakima by the J.H. Hathaway Plat recorded on October 9, 1894. The City has neither purchased, maintained nor made any improvements to this area in the past. Therefore, no compensation is required for this alley right-of-way vacation.

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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 or alley right-of-way area and to make a recommendation to the City Council relative thereto.

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

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

(4) Since the petitioner owns 100% of the property abutting the alley right-of-way area to be vacated, petition signatures were obtained from the owners of the requisite two-thirds of the property abutting the area to be vacated.

(5) The right-of-way to be vacated was dedicated to the City by the J.H. Hathaway Plat which was recorded on October 9, 1894, rather than being purchased by the City.

(6) The Yakima Urban Area Comprehensive Plan designates the property abutting the area to be vacated as Commercial Mixed Use on the north and as Mixed Residential on the south, which will become the Comprehensive Plan designations of the vacated property if the City Council grants this request.

(7) The Yakima Urban Area Zoning Ordinance classifies the property abutting the area to be vacated as General Commercial (GC) on the north and Multi-Family Residential (R-3) on the south, which will become the zoning classifications of the vacated property if the City Council grants this request.

(8) No properties would be denied 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 or

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access to a public street, specifically either frontage on Fruitvale Boulevard or access to North 6th Avenue.

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

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

(11) The requested alley right-of-way vacation would not affect any public or franchised utility lines because they are located within a public utility easement.

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

(13) YMC §14.21.070(A)(4) states that compensation is not required to be paid to the City for the area to be vacated under the circumstances involved in this request.

(14) If the Yakima City Council approves the requested right-of-way vacation, the vacated right-of-way would belong to the sole owner of the abutting property on both sides of the area to be vacated which is the Yakima Housing Authority.

RECOMMENDATION

The Hearing Examiner recommends that the Yakima City Council approve this request to vacate the portion of an unimproved dead-end alley right-of-way beginning a short distance west of North 6th Avenue and extending westerly behind parcels fronting on Fruitvale Boulevard between Assessor's Parcel Numbers 181313-31417, 31418, 31419 and 31513 on the north and Assessor's Parcel Number 181313-31514 on the south which are all owned by the Yakima Housing Authority, subject to the following conditions.

(1) The legal description of the vacated area shall be a ten (10)-foot-wide strip of land platted as an alley and shown on the Plat of Hathaway's Subdivision of Lots 31 and

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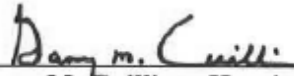
32 of Hathaway's 5 Acre Tracts in Section 13, Township 13 North, Range 18 East, W.M., within Block 1, lying north of, parallel with and adjacent to Lots 8 and 9 of said subdivision; SUBJECT TO an easement for public utilities over and across the same ten (10)-foot-wide strip of land.

(2) Upon vacation, the north five (5) feet of the vacated area shall have the zoning classification of General Commercial (GC) and the south five (5) feet of the vacated area shall have the zoning classification of Multi-Family Residential (R-3).

(3) A detailed site plan shall be provided which accurately shows all existing utilities within the right-of-way to be vacated.

(4) A public utility easement shall be maintained to provide access for operation, maintenance or replacement of the existing utilities systems and improvements thereto.

DATED this 28th day of February, 2020.



Gary M. Cuillier, Hearing Examiner

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