

ORDINANCE NO. 1418

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, ADDING CHAPTER 12.36 TO THE PALM DESERT MUNICIPAL CODE REGARDING PUBLIC RIGHT-OF-WAY VACATION PROCEDURES AND MAKING FINDINGS UNDER CEQA

WHEREAS, the vacation of public streets, highways, and public services easements are generally governed by Division 9, Part 3 of the California Streets and Highways Code (Sections 8300-8363); and

WHEREAS, the City of Palm Desert desires to establish local laws and procedures for the vacation of public streets, highways, and public service easements to augment the general provisions of the California Streets and Highways Code; and

WHEREAS, the City Council of the City of Palm Desert, California, did on the 10th day of October 2024, hold a duly noticed public hearing to consider the Ordinance; and

WHEREAS, at the said public hearing, upon hearing and considering all testimony and arguments, if any, of all interested persons desiring to be heard, the City Council did find the following facts and reasons, which are outlined in the staff report, exist to justify approval of said request:

THE CITY COUNCIL OF THE CITY OF PALM DESERT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Addition to Municipal Code. Chapter 12.36 *Procedures for Vacating City Rights-of-Way or Portions Thereof* is added to the Palm Desert Municipal Code to read as follows:

“Chapter 12.36 PROCEDURES FOR VACATING CITY RIGHTS-OF-WAY OR PORTIONS THEREOF

12.36.010 Statement of policy on right-of-way vacations.

The City of Palm Desert favors limited, conditional, private use of public right-of-way property through the encroachment permit process set forth in Chapter 12.04 of this Code and other City laws over the outright vacation of the City’s legal interest in such property. Further, the public use of pedestrian stairway and pathway rights-of-way shall be respected in considering requests for vacation. In certain situations, public right-of-way vacation may be appropriate pursuant to the provisions of this Chapter.

12.36.020 Definitions

“Adoption” of a resolution includes passage or enactment of a resolution.

“City” means the City of Palm Desert.

“City Council” means the City Council of the City.

“City Clerk” means the City Clerk of the City.

“City Engineer” means the City Engineer or their designee.

“Director” means the Director of Development Services or their designee.

“Interested person” means the owner(s), or their authorized representative(s), of a parcel or parcels which is/are contiguous to the part of the public right-of-way sought to be vacated.

“Planning Commission” means the Planning Commission of the City.

“Public Body” means a city or special district as defined in Section 54775 of the Government Code.

“Public service easement” includes all or part of, or any right in:

(a) A right-of-way, easement, or use restriction acquired for public use by dedication or otherwise for sewers, pipelines, pole lines, electrical transmission and communication lines, pathways, storm drains, drainage, canal, water transmission lines, light and air, and other limited use public easements other than for street or highway purposes.

(b) An easement or right of a type described in Section 8340.

“Public utility” means a public utility as defined in Section 216 of the Public Utilities Code.

“Street” and “highway” includes all or part of, or any right in, a state highway or other public highway, road, street, avenue, alley, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters’ rights, sloping easements, or other incidents to a street or highway.

“Vacation” means the termination of the public interest in a right-of-way (opened or unopened), and the extinguishment of the easement for public travel that is represented by the right-of-way.

12.36.030 Application

A. Any interested person desiring to have a public street, highway, or public service easement vacated shall submit an application to the Director on forms provided by the City.

B. Each application shall include the following information:

1. A general and legal description of the right-of-way, or portion thereof, proposed to be vacated together with a map or plan which illustrates the extent of the vacation in relation to the right-of-way, public service easements, if any, and the contiguous properties.

2. An independent, written title report to determine ownership interests in the right-of-way, or portion thereof, proposed to be vacated, and the contiguous property or properties. The title report shall be issued by a title insurance company licensed and admitted to conduct business by the State of California.

3. A statement describing how the right-of-way sought to be vacated is unnecessary for present or prospective public use.

4. A deposit of the fee required pursuant to Section 12.36.030.

5. All additional information or documentation as required by the Director.

C. If applicable, a statement and any accompanying documentary proof that the request for vacation is prompted by error, safety, or hardship as described in Section 12.36.060 and is eligible for expedited review under that section.

12.36.030 Fee required.

A processing fee representing the estimated reasonable City costs to process the application shall be deposited with the City in order for the application to be complete. The fee amount shall be established by City Council resolution.

12.36.040 Acceptance of application – Planning Commission review.

The Director, the City Engineer, and other staff shall review the application for completeness. The City shall seek input from the holders of any public service easements to determine if there are any adverse effects of the requested vacation upon these public service easements and the City may make changes or conditions to the requested vacation accordingly. Environmental inspections and/or review, if required, shall be conducted. Once the application is determined complete by City staff, it shall be submitted to the City Clerk. The City Clerk shall set the matter for consideration by the Planning Commission solely to determine if the location, purpose and extent of the vacation conforms with the City's General Plan under Government Code Section 65402. The date the Planning Commission renders its determination shall initiate the proceedings for purposes of taking the vacation request to the City Council. At the Director's discretion, the City may combine several vacation applications and present them to the Planning Commission or City Council in the same proceeding. At the conclusion of the Planning Commission proceedings, the City Clerk shall set the City Council public hearing date and follow the procedures set forth in Section 12.36.070 and Sections 8322 and 8323 of the California Streets and Highways Code.

12.36.050 Appraisal required.

Unless exempt pursuant to Section 12.36.060, an independent, written appraisal to determine the value of the right-of-way, or portion thereof, proposed to be vacated shall be obtained by the City prior to consideration of the request to vacate by the City Council. The right-of-way shall be valued at the same unit value of the contiguous property or properties for its highest and best use as if both the right-of-way to be vacated and the contiguous property or properties are vacant. That is, the appraisal shall consider the value of the right-of-way to be vacated irrespective of the existence of any improvements or structures. The applicant shall bear the cost of the appraisal. The City may combine several vacation applications in order to reduce and distribute the appraisal cost among several applicants.

12.36.060 Expedited review in instances of error, safety or hardship.

Expedited review of vacation applications means the application, once complete, proceeds directly to the Planning Commission under Section 12.36.040 and is exempt from the appraisal requirement under Section 12.36.050.

In order to qualify for expedited review, the application must demonstrate to the satisfaction of the City Engineer that one or more of the following conditions exists:

A. An error exists in title to the right-of-way proposed for vacation. An “error” is defined as a mistake in the legal description of the right-of-way, in the chain of title to the right-of-way, or in the property boundaries of the right-of-way, for example, by conflicts between metes and bounds descriptions, physical monuments, recorded maps or deeds or other recorded instruments. The error may be shown by a survey prepared at the sole cost of the applicant by a surveyor licensed by the State of California Board of Professional Engineers, Land Surveyors, and Geologists. The error must be described in detail and substantiated in writing by an opinion of a title insurance company licensed to do business in the State of California.

B. The existence of the right-of-way proposed for vacation poses a serious, hazardous threat to the safety of the public or to the safety of the persons or property upon the property or properties. The safety hazards must be described in detail and attested in writing by the applicant under penalty of perjury. An example of a serious safety hazard would be a landslide or an imminent landslide.

C. The existence of the right-of-way proposed for vacation poses an unreasonable hardship on the applicants if the vacation were not granted by the City. The instances of hardship must be described in detail and attested in writing by the applicant under penalty of perjury. An example of a hardship would be proof of substantial economic loss and/or unreasonable restraint against alienation if the vacation were not granted, and no other reasonable alternative exists such as issuance of an encroachment permit.

12.36.070 City Council procedure.

The Director shall comply with the State law procedures for vacations, including without limitation the procedures set forth in the public streets, highways, and service easements vacation law (California Streets and Highways Code Sections 8300 and following). A public hearing is required before the City Council and the City Clerk shall cause legal notice to be provided. Notice shall include mailed notice to all properties within 300 feet of the right-of-way proposed to be vacated at least two weeks' ahead of the public hearing date. Per the California Streets and Highways Code Section 8323 the legislative body shall conspicuously post notices of vacation along the line of the street, highway, or public service easement proposed to be vacated. The notices shall be posted not more than 300 feet apart, but at least three notices shall be posted. If the line of the street, highway, or public service easement proposed to be vacated exceeds one mile in length, the legislative body may, in lieu of posting not more than 300 feet apart, post notices at each intersection of another street or highway with the street, highway, or public service easement to be vacated and at one point approximately midway between each intersection, but at least three notices shall be posted. At the Director's discretion, the City may combine several vacation applications and present them to the City Council in the same proceeding.

12.36.080 Findings required.

The City Council shall not adopt a resolution approving a vacation unless it finds as follows:

A. The right-of-way to be vacated, or portion thereof, is unnecessary for present or prospective public use.

B. The vacation conforms to the City's General Plan, including the Mobility Chapter.

C. The vacation serves the public interests to a degree greater than if the private use of the right-of-way was conferred by encroachment permit.

D. The vacation has been reviewed in conformance with the California Environmental Quality Act and will have no environmental effects that adversely impact the public safety or welfare.

E. Adequate consideration has been offered in exchange for vacating the public's interest in the affected right-of-way. The adequacy of the consideration is not limited to monetary remuneration and is to be determined on a case-by-case basis at the sole discretion of the City Council. The Council may consider such factors as the appraised value of the vacated right-of-way, the use which the applicant is to make of the vacated right-of-way, and whether the loss of the public's interest in the vacated right-of-way is offset by the increase in the public's welfare, health or safety attributable to the applicant's combined use of the vacated right-of-way and the properties contiguous to it.

F. On a case-by-case basis, the City Council may determine that the vacated right-of-way shall not be used by the applicant or its successor to satisfy any development or building requirements associated with the contiguous parcel or parcels, for example to increase the development potential of the contiguous parcel or parcels, such as an increase in floor area ratio or lot coverage.

G. The vacation shall not unreasonably interfere with the viability of the remaining right-of-way nor public service easements in proximity thereto.

H. In order to render any one or more of the findings in this section, the City Council may impose conditions upon the vacation, including without limitation the requirement of the applicant to pay compensation; the requirement that the applicant release and indemnify the City from liability, including environmental liability, and liability which may relate to neighboring properties; the requirement that the applicant maintain the vacated property; and the requirement that the vacation is subject to certain defined reservations and exceptions.

12.36.090 Record of vacation.

To the extent the City Council approves or conditionally approves the vacation, the decision shall be made by resolution and shall be recorded with the Riverside County Recorder together with any deeds or other instruments which may be required by law. The property vacated shall not be considered surplus property of the City.”

12.36.100 Summary vacation authority.

- A. The City Council may summarily vacate a street, or highway that has been superseded by relocation unless the vacation would (1) cut off all access to a person’s property, which prior to relocation adjoined the street or highway; or (2) terminate a public service easement unless the easement meets the criteria for summary vacation of a public service easement.
- B. The City Council may summarily vacate when the street or highway has been impassable for vehicular travel for 5 years and no public money has been expended for maintenance during that period.
- C. The City Council may summarily vacate an excess right-of-way of a street or highway if it is not required for street or highway purposes.
- D. The City Council may summarily vacate a portion of a street or highway if this portion lies within property under one ownership and does not continue through such ownership or end touching the property of another.
- E. The City Council may summarily vacate a street or highway pursuant to an agreement with the department of transportation pursuant to Streets and Highways Code Section 100.2 to close a street or highway at or near the point of its interception with a state freeway.

- F. The City Council may summarily vacate public service easements in any of the following circumstances:
- a. The easement has not been used for the purpose for which it was dedicated or acquired for 5 consecutive years immediately preceding the proposed vacation;
 - b. The date of dedication or acquisition is less than 5 years, and more than 1 year, immediately preceding the proposed vacation, and the easement has not been used continuously since that date; or
 - c. The easement has been superseded by relocation, or determined to be excess by the easement holder, and there are no other public facilities located within the easement.
- G. The City Council shall not summarily vacate a street, highway, or public service easement if there are in-place public utility facilities that are in use and would be affected by the vacation.

12.36.110 Summary vacation procedure.

- A. The City Council may summarily vacate a street or highway by adopting a resolution of vacation after a general plan consistency finding by the planning department pursuant to California Government Code Section 65402(a).
- B. The City Council is not required to hold a public hearing to summarily vacate a street or highway.
- C. The resolution of vacation must then be recorded in the Riverside County Recorder's office. From the date of such recording the vacation will be complete, and the street or highway will no longer constitute a street."

SECTION 2. Severability. If any section, subsection, clause or phrase of this Ordinance or any part thereof is for any reason held to be invalid, unconstitutional, or unenforceable by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the Ordinance. The City Council declares that it would have passed each section, subsection, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase would be declared invalid, unconstitutional or unenforceable.

SECTION 3. CEQA. The City Council hereby finds and determines that this Ordinance is exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that the Ordinance would not have the potential or possibility for causing a significant effect on the environment. Specifically, the proposed changes to the Municipal Code are primarily technical and administrative in nature. The Ordinance would codify procedures for vacating city rights-of-way or portions thereof. No construction is proposed and the amendments do not constitute any project approvals. In reviewing the Ordinance the City Council has exercised its independent judgment and has reviewed and considered the Ordinance in light of all testimony received, both oral and written. Therefore, based upon the entire administrative record, the City Council hereby determines that no further environmental review is required for the Ordinance.

SECTION 4. Publication. The City Clerk of the City of Palm Desert, California, is hereby directed to publish a summary of this Ordinance in the Desert Sun, a newspaper of general circulation, published and circulated in the City of Palm Desert, California, and shall be in full force and effective thirty (30) days after its adoption.

ADOPTED ON _____, 2024.

KARINA QUINTANILLA
MAYOR

ATTEST:

ANTHONY J. MEJIA
CITY CLERK

I, Anthony J. Mejia, City Clerk of the City of Palm Desert, California, do hereby certify that Ordinance No. 1418 is a full, true, and correct copy, and was introduced at a regular meeting of the Palm Desert City Council on October 10, 2024, and adopted at a regular meeting of the City Council held on _____, 2024, by the following vote:

AYES: HARNIK, KELLY, NESTANDE, TRUBEE, AND QUINTANILLA
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE
RECUSED: NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Palm Desert, California, on _____.

ANTHONY J. MEJIA
CITY CLERK