

APPROVED

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YAMHILL COUNTY, OREGON
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CHARLES STERN
COUNTY CLERK
Nord
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85-594 IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of the Adoption)
of a New Ordinance Regulating)
the Vacation of Certain Public) ORDINANCE NO. 418
Property Under the Jurisdiction)
of County Governing Body and)
Repealing Ordinance No. 280)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) on the 21st day of August, 1985, sat for the transaction of County business in special session, Commissioners Ted Lopuzynski, Donald D. Porter and David E. Bishop being present.

WHEREAS, the Board of Commissioners, hereinafter referred to as the Board, established a procedure for the vacation of public property and County roads within the County by adopting Ordinance No. 280; and

WHEREAS, the vacation procedures provided for in ORS 368 were amended by the legislature; and

WHEREAS, it is necessary for the Board to repeal Ordinance No. 280 and adopt this ordinance in order to reflect those changes: NOW THEREFORE

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY HEREBY ORDAINS as follows:

Section 1. Purpose. To establish a procedure whereby a private citizen may vacate all or part of any public road, trail, easement or County road under the jurisdiction of the County governing bodies. This procedure shall be in addition to any other procedure provided by law.

Section 2. Application shall be made to the Yamhill County Department of Public Works, hereinafter referred to as the Public Works Department, on forms prescribed by said department, together with a nonrefundable fee as may be set from time to time by order of the Board. Said application shall contain a statement of reasons why the property should be vacated and a description of the property to be vacated.

Section 3. Referral. The application received pursuant to Section 2 above shall be referred to the Yamhill County Department of Planning and Development, the County Surveyor, the County Engineer, County Counsel and any other federal, state or local jurisdictions deemed appropriate for comment.

Section 4. Upon return of the appropriate referrals, the Director of Public Works or his designee shall prepare a written report for submission to the Board. Said report shall contain a description of the ownership and uses of the property proposed to be vacated; an opinion whether the vacation of the property would be in the public interest; and any other relevant information which the Director deems appropriate. The report shall be forwarded to the Board of Commissioners for placement on the next agenda, at which time the Board shall determine whether initiation of statutory proceedings is appropriate or whether to deny the application.

Section 5. Scheduling of Hearing. If the Board determines a hearing to be appropriate to decide whether the property in question should be vacated, the Board shall establish a hearing date and shall collect, through the Public Works Department, a nonrefundable filing fee as may be set from time to time by order of the Board to defray the cost of proceedings. No notice shall be prepared as required by law until such additional fee is paid to the Public Works Department. If the additional fee is paid too late to meet the requirements of notice as set forth in this ordinance, the Public Works Department shall notify the Board and the Board shall schedule a new hearing date along with such additional fee as is necessary to cover the costs incurred to reschedule the hearing.

Section 6. Notice. The Director of Public Works, upon notification that the Board has scheduled a hearing, shall cause notice of the hearing to be prepared. Said notice shall contain a short, clear statement of the subject matter of the proceedings; a statement of matters asserted or charged or acts proposed to be taken at the hearing; an explanation of how persons may obtain more detailed information about the proceedings; a statement of persons' right to attend and present evidence at the hearing; the time and place of the proceedings; and a reference to the particular section of this ordinance and state statute which authorizes the proceedings.

Notice shall be by posting, publication and service by certified mail. The property to be vacated will be posted in at least three places which are visible to the public at least 30 days prior to the date of the hearing. Notice of the hearing will be published in a newspaper of general circulation in the area in which the property to be vacated is located, one publication to occur at least 20 days prior to the date of hearing and the second publication to occur within ten days of the date of hearing.

Notice shall also be served by certified mail on any person with a recorded interest in either the property to be vacated or real property abutting the property proposed to be vacated, said mail notice shall be accomplished at least thirty days prior to the date of hearing.

Section 7. Hearing. The Board of Commissioners shall hold a public hearing at which time persons interested in the proceedings shall be entitled to present information or evidence to the Board on the question whether the Board of Commissioners should vacate said property. The hearing shall be conducted in accordance with the Yamhill County Ordinance setting forth procedures for public hearings and the Board shall consider all evidence presented therein.

Section 8. Proof of Notice. The person providing the notice as required in this ordinance shall file an affidavit at the hearing provided above which specifies the manner and to whom notice was directed or provided. Said affidavit shall be filed as part of the hearing process and the Board shall not take action to vacate any property until such time as an appropriate affidavit has been filed.

Section 9. Criteria for vacation. The Board shall make a determination whether to vacate the subject property upon a decision that such vacation is in the public interest. In reaching that decision, the Board may consider any or all of the following:

- a) If the property proposed for vacation is a road, whether the road has been opened.
- b) If a road, is the property needed as part of the general road system of the County.
- c) Cost of maintaining the property in comparison to the utility of allowing the property to remain in its present use.
- d) Any other relevant factors which the Board, in its discretion determines affects the public interest.

Section 10. Contents of the order. In reaching a decision the Board shall issue an order which shall state an express determination whether the proposed vacation is in the public interest and shall further state whether the property is vacated, the exact location of the property and direct that the order be recorded with the County Clerk and filed with the County Surveyor and Assessor. The Board may also, in its order, indicate ownership of the property to be vacated in accordance with ORS 368.366. The order of the Board shall be effective when recorded with the County Clerk.

Section 11. Limitation. The Board shall not vacate public lands pursuant to this ordinance if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the Board has the consent of the owner.

Section 12. Yamhill County Ordinance No. 280 is hereby repealed in its entirety.

Section 13. This ordinance being necessary for the preservation of health, safety and welfare of the citizens of Yamhill County, an emergency is hereby declared to exist and this ordinance shall be effective immediately upon passage.

DONE this 21st day of August, 1985 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES [Signature]
County Clerk

[Signature: Ted Lopuszynski]
Chairman TED LOPUSZYNSKI

By: [Signature: Elaine Pearcey]
Deputy ELAINE PEARCEY

[Signature: Donald D. Porter]
Commissioner DONALD D. PORTER

APPROVED AS TO FORM BY:
[Signature: Daryl S. Garrettson]
DARYL S. GARRETTSON
County Counsel

[Signature: David E. Bishop]
Commissioner DAVID E. BISHOP