

VACATIONS UNDER O.R.S. CHAPTER 368

The provisions of ORS Chapter 368.326 – 368.426 establish vacation procedures by which a county governing body may vacate a subdivision, part of a subdivision, a public road, a trail, a public easement, public square or any other public property or public interest in property under the jurisdiction of the county governing body.

Items commonly vacated are:

County Roads	Platted Walkways	Utility Easements
Public Roads	Platted Lot Lines	Slope Easements
Platted Roads	Lots & Blocks	Drainage Easements
Platted Alleys	Common Areas	Ways of Necessity

All vacation proceedings in Lane County jurisdiction must go before the Board of Commissioners for a decision of approval or denial. The attached copies of state statutes and the sample vacation petition are intended to help you comply with the provisions of ORS 368.341 to initiate a vacation action to be considered by the Lane County Board of Commissioners. You may also request a copy of a previously completed and recorded petition as a formatting aid. To assure all elements of the petition are satisfactory before obtaining the necessary acknowledged signatures, it is recommended that a preliminary draft of your petition be reviewed by the Surveyor's Office.

Some vacations may be presented to the Board of Commissioners in one of their regular meetings with no requirement of public hearing. Vacations without a hearing require a lesser fee and are usually processed in shorter time spans, as public hearing notices are not necessary. Typically, vacations allowed without a hearing include vacation of platted lots and lot lines, slope easements, drainage easements, and unopened roads or alleys that are entirely within the petitioners' ownership and that do not affect other landowners or the general public. Vacations without a hearing require a petition signed by the owners of 100% of any private property being vacated, and by the owners of 100% of property abutting any public property being vacated. All signatures must be acknowledged by a notary public. The process for a vacation without a hearing is used at the discretion of the Public Works Director, and will not normally be allowed if large segments of public rights of way are involved.

To initiate a vacation without a hearing under ORS 368.351, a valid petition per ORS 368.341 must be submitted. The fee structure for processing a **vacation without a hearing** is as follows (Lane Manual 60.853):

A deposit of **\$3400** will be required at the time the petition is submitted. The final fee will be based on actual costs incurred by Lane County for processing the vacation. Typical actual costs include research and investigation, document processing, hourly rates of staff assigned to the project plus overhead, and document recording fees. Upon completion of the project, the difference between the deposit and actual costs will be billed or refunded to the applicant. An approved County vacation shall not be recorded until any additional amounts due are paid.

Any vacation deemed controversial, with questionable public interest, or with petitioners' signatures representing less than 100% of abutting property ownership will require a public hearing. A valid petition per ORS 368.341 must be submitted to initiate the process. Vacations with a hearing are more prolonged, due in part to the public notice requirements of state law. The fee structure for processing a **vacation with a hearing** is as follows (Lane Manual 60.853):

A deposit of **\$4800** will be required at the time the petition is submitted. The final fee will be based on actual costs incurred by Lane County for processing the vacation. Typical actual costs include research and investigation, document processing, hourly rates of staff assigned to the project plus overhead, field investigation and posting legal notices, and document recording fees. Upon completion of the project, the difference between the deposit and actual costs will be billed or refunded to the applicant. An approved County vacation shall not be recorded until any additional amounts due are paid.

In addition to the processing fees above, **vacations may be subject to the assessment of a special benefit fee** if determined to be applicable by the Public Works Director. Said special benefit fee will be pursuant to Lane Manual 60.853 (see final page of this handout for the text of LM 60.853).

Vacations occurring within incorporated cities should be discussed with the City officials having jurisdiction. City vacations are processed under the provisions of ORS Chapter 271.

CAUTION: "Public Interest" is the sole test that the Commissioners will use to determine whether to approve or deny your petition. A statement regarding how the proposed vacation will affect the public interest should be included in the petition. Demonstration of how this vacation will be of benefit to the public is the responsibility of the petitioner(s), and will directly affect Surveyor's Office recommendations and Board of Commissioners' final determination.

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

IN THE MATTER OF THE VACATION OF A PORTION)
OF XXXXXX (NAME OF ROAD), IN SECTION XX, TOWNSHIP)
XX SOUTH, RANGE XX WEST (OR EAST) OF THE WILLAMETTE) PETITION TO VACATE
MERIDIAN, IN LANE COUNTY, OREGON)

PURSUANT to the procedures set forth in ORS Chapter 368, we the undersigned XXXXXXXXXXXX and XXXXXXXXXXXX, husband and wife, XXXXXXXXXXXX, Inc., and XXXXXXXXXXXX as owners of the adjacent real property hereby petition for the vacation of a portion of County Road Number XXX (Name of Road), which area to be vacated is described as follows:

(NOTE: IT IS IMPORTANT THAT THE LEGAL DESCRIPTION BE ACCEPTABLE IN FORM AND CONTENT, AND IT IS RECOMMENDED THAT A DRAFT OF PETITION BE SUBMITTED TO THE SURVEYOR’S OFFICE FOR REVIEW PRIOR TO CIRCULATION FOR SIGNATURES)

All that portion of County Road Number XXX (Name of Road) located adjacent to, being further described as, Beginning at a point, thence to, and there ending, all in Lane County, Oregon.

**(CHOOSE THE SENTENCE BELOW THAT BEST APPLIES TO YOUR SITUATION)
EITHER....**

WHEREAS, the undersigned petitioners are the owners of at least 60% of all the real property located adjacent to the above described area to be vacated; and

OR...

WHEREAS, the undersigned petitioners are the owners of 100% of all the real property adjacent to the above described area to be vacated; and

WHEREAS, petitioners allege as follows:

1. The purpose of this vacation request is to
2. There are XXXXXX utilities, and XXXXXX powerlines located in the area to be vacated, and their disposition will be as follows:
 - A. XXXXXX
 - B. XXXXXX

Necessary easements for all existing public and private utilities will be retained or otherwise be provided for in conjunction with the vacation; and

WHEREAS, no portion of the area to be vacated is located within the boundaries of an incorporated city or town; and

WHEREAS, the public interest will be served by.....(statement of how the vacation will affect the public interest); and

WHEREAS, petitioners, separately and collectively, acknowledge that the filing fee is a deposit and an estimate of the vacation fee, and that we accept responsibility for full payment of fees associated with the processing of this vacation in accordance with Lane Manual 60.853, regardless of whether this vacation is approved or denied; and

WHEREAS, petitioners, separately and collectively, have no objection to Lane County proceeding under the authority of ORS Chapter 368.326, for vacation with or without a hearing; and

THEREFORE, the petitioners request the Board of Commissioners of Lane County:

1. To set a date to consider the vacation of the above described portion of road, with or without a hearing, pursuant to ORS Chapter 368.

2. Upon review of this matter, to order the vacation of the above described road, and direct that title to the vacated area revert and vest in accordance with ORS 368.366.

DATED this _____ day of _____, 200_

PETITIONERS:

(ACKNOWLEDGED SIGNATURE)
PRINTED PETITIONER NAME
Map# XX-XX-XX-XX TL XXXXX
MAILING ADDRESS
CITY, STATE, ZIP

(ACKNOWLEDGED SIGNATURE)
PRINTED PETITIONER NAME
Map# XX-XX-XX-XX TL XXXXX
MAILING ADDRESS
CITY, STATE, ZIP

State of XXXXXX)
County of XXXX)^{ss.}

On _____, 200_, personally appeared the above named _____

_____ and acknowledged the foregoing instrument to be a voluntary act before me:

Notary Public for XXXXXX (STATE)
My Commission Expires: _____

(ACKNOWLEDGED SIGNATURE)
PRINTED PETITIONER NAME
Map# XX-XX-XX-XX TL XXXXX
MAILING ADDRESS
CITY, STATE, ZIP

(ACKNOWLEDGED SIGNATURE)
PRINTED PETITIONER NAME
Map# XX-XX-XX-XX TL XXXXX
MAILING ADDRESS
CITY, STATE, ZIP

State of XXXXXX)
County of XXXX)^{ss.}

On _____, 200_, personally appeared the above named _____

_____ and acknowledged the foregoing instrument to be a voluntary act before me:

Notary Public for XXXXXX (STATE)
My Commission Expires: _____

TEXT TAKEN FROM OREGON REVISED STATUTES PERTAINING TO VACATIONS:

VACATION OF COUNTY PROPERTY

368.326 Purpose of vacation proceedings; limitation. ORS 368.326 to 368.366 establish vacation procedures by which a county governing body may vacate a subdivision, part of a subdivision, a public road, a trail, a public easement, public square or any other public property or public interest in property under the jurisdiction of the county governing body. The vacation procedures under ORS 368.326 to 368.366:

(1) Shall not be used by the county governing body to vacate property or an interest in property that is within a city.

(2) Are an alternative method to the method established under ORS chapter 92 for the vacation of a subdivision. [1981 c.153 §34]

368.331 Limitation on use of vacation proceedings to eliminate access. A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner. [1981 c.153 §35]

368.336 Abutting owners in vacation proceedings. Where the property proposed to be vacated under ORS 368.326 to 368.366 is a public road, a person owning property that abuts either side of the road is an abutting property owner for purposes of ORS 368.326 to 368.366 even when the county governing body proposes to vacate less than the full width of the road. [1981 c.153 §36]

368.341 Initiation of vacation proceedings; requirements for resolution or petition. (1) A county governing body may initiate proceedings to vacate property under ORS 368.326 to 368.366 if:

(a) The county governing body adopts a resolution meeting the requirements of this section;

(b) The person who holds title to property files with the county governing body a petition meeting the requirements of this section and requesting that the property be vacated; or

(c) The owner of property abutting public property files with the county governing body a petition meeting the requirements of this section and requesting vacation of the public property that abuts the property owned by the person.

(2) A county governing body adopting a resolution under this section shall include the following in the resolution:

(a) A declaration of intent to vacate property;

(b) A description of the property proposed to be vacated; and

(c) A statement of the reasons for the proposed vacation.

(3) Any person filing a petition under this section shall include the following in the petition:

(a) A description of the property proposed to be vacated;

(b) A statement of the reasons for requesting the vacation;

(c) The names and addresses of all persons holding any recorded interest in the property proposed to be vacated;

(d) The names and addresses of all persons owning any improvements constructed on public property proposed to be vacated;

(e) The names and addresses of all persons owning any real property abutting public property proposed to be vacated;

(f) Signatures, acknowledged by a person authorized to take acknowledgments of deeds, of either owners of 60 percent of the land abutting the property proposed to be vacated or 60 percent of the owners of land abutting the property proposed to be vacated; and

(g) If the petition is for vacation of property that will be redivided in any manner, a subdivision plan or partitioning plan showing the proposed redivision.

(4) The county governing body may require a fee for the filing of a petition under this section. [1981 c.153 §37]

368.346 Report, notice and hearing for vacation proceedings. Except as provided in ORS 368.351:

(1) When a vacation proceeding has been initiated under ORS 368.341, the county governing body shall direct the county road official to prepare and file with the county governing body a written report containing the following:

- (a) A description of the ownership and uses of the property proposed to be vacated;
- (b) An assessment by the county road official of whether the vacation would be in the public interest; and
- (c) Any other information required by the county governing body.

(2) Upon receipt of the report under subsection (1) of this section, a county governing body shall establish a time and place for a hearing to consider whether the proposed vacation is in the public interest.

(3) Notice of the hearing under this section shall be provided under ORS 368.401 to 368.426 by posting and publication and by service on each person with a recorded interest in any of the following:

- (a) The property proposed to be vacated;
- (b) An improvement constructed on public property proposed to be vacated; or
- (c) Real property abutting public property proposed to be vacated.

(4) During or before a hearing under this section, any person may file information with the county governing body that controverts any matter presented to the county governing body in the proceeding or that alleges any new matter relevant to the proceeding. [1981 c.153 §38]

368.351 Vacation without hearing. A county governing body may make a determination about a vacation of property under ORS 368.326 to 368.366 without complying with ORS 368.346 if the proceedings for vacation were initiated by a petition under ORS 368.341 that indicates the owners' approval of the proposed vacation and that contains the acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated and either:

(1) The county road official files with the county governing body a written report that contains the county road official's assessment that any vacation of public property is in the public interest; or

(2) The planning director of the county files a written report with the county governing body in which the planning director, upon review, finds that an interior lot line vacation affecting private property complies with applicable land use regulations and facilitates development of the property subject to interior lot line vacation. [1981 c.153 §39; 2005 c.762 §1]

368.356 Order and costs in vacation proceedings. (1) After considering matters presented under ORS 368.346 or 368.351, a county governing body shall determine whether vacation of the property is in the public interest and shall enter an order or resolution granting or denying the vacation of the property under ORS 368.326 to 368.366.

(2) An order or resolution entered under this section shall:

- (a) State whether the property is vacated;
- (b) Describe the exact location of any property vacated;
- (c) Establish the amounts of any costs resulting from an approved vacation and determine persons liable for payment of the costs;
- (d) Direct any persons liable for payment of costs to pay the amounts of costs established; and
- (e) If a plat is vacated, direct the county surveyor to mark the plat as provided under ORS 271.230.

(3) When an order or resolution under this section becomes final, the county governing body shall cause the order to be recorded with the county clerk and cause copies of the order to be filed with the county surveyor and the county assessor. The order or resolution is effective when the order or resolution is filed under this subsection.

(4) Any person who does not pay costs as directed by an order under this section is liable for those costs. [1981 c.153 §40]

368.361 Intergovernmental vacation proceedings. (1) Notwithstanding ORS 368.326, a county governing body may vacate property that is under multiple public jurisdiction or that crosses and recrosses from public jurisdiction to public jurisdiction if:

- (a) Vacation proceedings are initiated by each public body with jurisdiction;
- (b) The public bodies proceed separately with vacation proceedings or conduct a joint proceeding; and
- (c) Each public body reaches a separate decision about the proposed vacation.

(2) Each public body must reach a separate decision to vacate property under this section before the vacation may be completed. If each public body has determined that the property should be vacated, each

public body shall issue a separate order or resolution vacating those portions of the property under their respective jurisdictions.

(3) Notwithstanding ORS 368.326, a county governing body may vacate property that is under the jurisdiction of the county and that is entirely within the limits of a city if that city, by resolution or order, concurs in the findings of the county governing body in the vacation proceedings.

(4) Public bodies vacating property under this section shall each use procedures for vacation that each uses for other vacation proceedings. [1981 c.153 §41; 1989 c.219 §1]

368.366 Ownership of vacated property. (1) When a county governing body vacates public property under ORS 368.326 to 368.366, the vacated property shall vest as follows:

(a) If the county holds title to the property in fee, the property shall vest in the county.

(b) If the property vacated is a public square the property shall vest in the county.

(c) Unless otherwise described in paragraph (a) or (b) of this subsection, the vacated property shall vest in the rightful owner holding title according to law.

(d) Except as otherwise provided in this subsection, the vacated property shall vest in the owner of the land abutting the vacated property by extension of the person's abutting property boundaries to the center of the vacated property.

(2) Notwithstanding subsection (1) of this section, a county governing body may determine the vesting of property vacated under ORS 368.326 to 368.366 in the order or resolution that vacates the property. [1981 c.153 §42]

NOTICE

368.401 General notice provisions. (1) ORS 368.401 to 368.426 establish standard methods for providing notice by service, posting or publication in actions or proceedings affecting real property. The methods established in ORS 368.401 to 368.426 for providing notice are applicable when notice is required by law to be made under ORS 368.401 to 368.426.

(2) ORS 368.401 to 368.426 do not:

(a) Limit the use of public moneys for providing notice or providing other information.

(b) Limit the persons to whom notice or information may be provided.

(c) Limit the manner in which notice may be provided.

(d) Apply where other methods for providing notice are specifically provided by law.

(e) Supersede any specific provision for providing notice that is part of any law requiring or permitting notice to be given under ORS 368.401 to 368.426. [1981 c.153 §43]

368.405 [Repealed by 1981 c.153 §79]

368.406 Notice by service. (1) When the law requires notice to owners of certain real property by service, the person providing notice by service may have notice personally served or may have the notice mailed.

(2) A person providing notice shall accomplish notice that is personally served by obtaining a signed acknowledgment of receipt of notice from:

(a) The person being served; or

(b) A person 18 years of age or older who resides at the address of the person being served.

(3) A person providing notice by mail shall accomplish notice by certified mail, return receipt requested, to the address of the person being served.

(4) A person's refusal to sign a receipt for notice that is personally served or mailed under this section is a waiver of any objection based on nonreceipt of the notice in any proceeding.

(5) Except where the person providing notice under this section has personal knowledge of a more appropriate address for the notice, the address to be used for notice personally served or mailed under this section is the address of the person to be served as shown on the tax rolls.

(6) A person serving notice under this section must serve notice at least 30 days before the date of the proceeding that is the subject of the notice. [1981 c.153 §44]

368.410 [Repealed by 1981 c.153 §79]

368.411 Notice by posting. (1) Where the law requires notice by posting, the person providing notice shall

post notices in no less than three places. The places where notice may be posted include any of the following:

- (a) The property subject to the proceeding that is the subject of the notice; or
 - (b) Property within the vicinity of the property described in paragraph (a) of this subsection.
- (2) Notice that is posted on property under this section must be plainly visible from a traveled public road.
- (3) Notwithstanding subsection (1) of this section, a person providing notice under this section may post fewer than three notices if the small size of the property limits the value of the number of postings.
- (4) A person posting notice under this section must post notice at least 20 days before the date of the proceeding that is the subject of the notice. [1981 c.153 §45]

368.415 [Amended by 1953 c.229 §2; 1971 c.427 §1; 1981 c.153 §66; renumbered 368.041]

368.416 Notice by publication. (1) Where the law requires notice by publication, the person providing notice shall publish the notice in a newspaper of general circulation in the county where the property that is the subject of the proceeding is located.

(2) A person publishing notice under this section must publish the notice once at least 20 days before and once within 10 days of the date of the proceeding that is the subject of the notice. [1981 c.153 §46]

368.420 [Repealed by 1981 c.153 §79]

368.421 Record of notice. A person providing notice under any provision of ORS 368.401 to 368.426 shall complete and sign an affidavit containing a record of the procedure followed to provide notice under those sections. The person shall file the affidavit with the public body with jurisdiction over the proceeding that is the subject of the notice or in a place designated by that public body. [1981 c.153 §47]

368.425 [Repealed by 1981 c.153 §79]

368.426 Contents of notice. Any notice under ORS 368.401 to 368.426 must include all of the following:

- (1) A short plain statement of the subject matter of the proceeding that requires the notice.
- (2) A statement of matters asserted or charged or action proposed to be taken at the proceeding.
- (3) An explanation of how persons may obtain more detailed information about the proceeding.
- (4) A statement of any right to hearing afforded any parties under law.
- (5) The time and place of any proceeding that will take place.
- (6) A reference to particular sections of statute, charter, ordinance or rule that provide the jurisdiction and process for the proceeding that is the subject of the notice. [1981 c.153 §48]

TEXT TAKEN FROM LANE MANUAL PERTAINING TO VACATION FEES:

60.853 Vacation And Special Benefit Fees.

Pursuant to ORS 368.326 through 368.366, the following fee schedule shall be paid at or prior to the time of filing petitions for the vacation of all or any part of any lot, tract, street, alley, road, highway, common or all or any part of any public square or any other public property or public interest in property in any unincorporated area or town:

(1) \$4,800 deposit for a proposed vacation of public lands with a public hearing. The final fee will be based on actual costs incurred by Lane County determined at the completion of the project. Actual costs include normal document processing and the hourly rate of staff assigned to the project, plus a Land Management Division overhead rate.

(2) \$3,400 deposit for a proposed vacation of public lands without a hearing per ORS 368.351. The final fee will be based on actual costs incurred by Lane County determined at the completion of the project. Actual costs include normal document processing and the hourly rate of staff assigned to the project plus a Land Management Division overhead rate.

(3) In addition to payment of the deposit and final fees referenced in subsections (1) and (2) above, a vacation of public property or public interest in property under the jurisdiction of the County governing body shall require payment by the petitioners of a deposit equal to the estimate of special benefit that results from the vacation and disposition of property to the benefitted property owners.

(a) The estimated value of the special benefit and the amount of money to be deposited shall be determined by the Public Works Director. In the event that the property being vacated has a special benefit value of less than \$2,500, it shall be considered de minimis and a payment of deposit for special benefit shall not be required.

(b) Notice of the proposed deposit for special benefit shall be provided by mail to the owners of the property proposed to be vacated and shall contain a statement that includes the names, addresses, and the amount of the required deposit of each landowner's special benefit by the vacation.

(c) The petitioner shall deposit with the County Surveyor the sum of money called for by this subsection (3) prior to the scheduling of a meeting of the Board of Commissioners for action on the vacation.

(d) Should the vacation be found to be in the public interest and approved, the deposit for special benefit shall be retained by the County. If the vacation is denied, the deposit for special benefit shall be returned to the landowners. *(Revised by Order No. 01-4-4-6, Effective 7.1.01; 04-2-11-3, 7.1.04; 07-4-18-3, 7.1.07)*