



ORDINANCE NO. 28200

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3 AN ORDINANCE relating to the vacation of City right-of-way; vacating that
4 portion of Milwaukee Way between East 11th Street and Lincoln
5 Avenue to the Port of Tacoma ("Port") pursuant to the terms of an
6 Interlocal Agreement with the Port relating to the planning and
7 construction of Highway 509, approved by the City Council in
8 November 1994; and adopting the Hearing Examiner's Findings,
9 Conclusions, and Recommendations related thereto.

10 WHEREAS this vacation request previously came before the City
11 Council as Substitute Ordinance No. 26580 on February 22, 2000, after
12 review and recommendation of approval by the Hearing Examiner, but the
13 matter was indefinitely postponed before any City Council decision, and

14 WHEREAS, due to the length of the intervening time and the potential
15 for changed conditions, the applicant and City staff agreed to resubmit the
16 matter to the Hearing Examiner with the proper notices for a public hearing
17 which was held on September 26, 2013, and
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1 WHEREAS the Hearing Examiner issued a new Report and
2 Recommendation on this matter dated October 23, 2013, and

3 WHEREAS, due to the changed conditions and circumstances
4 referenced in the Hearing Examiner's Report and Recommendation, this
5 Ordinance is intended to supersede and replace all prior ordinances
6 addressing this vacation petition, and
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8 WHEREAS all steps and proceedings required by law and by
9 resolution of the City Council to vacate the portion of the street hereinafter
10 named have been duly taken and performed; Now, Therefore,
11

12 BE IT ORDAINED BY THE CITY OF TACOMA:

13 Section 1. That the City Council hereby adopts the Hearing
14 Examiner's Findings, Conclusions, and Recommendations as contained in
15 the Hearing Examiner's Report and Recommendation to the City Council
16 bearing File No. 124.1108 and dated October 23, 2013, which Report is on
17 file in the office of the City Clerk.
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19 Section 2. That portion of Milwaukee Way between East 11th Street
20 and Lincoln Avenue to the Port of Tacoma, described as follows:
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Milwaukee Way lying between the southerly line of the 100 foot East 11th Street right of way and the northerly line of the 160 foot Lincoln Avenue right of way, located within the South half of Section 34, Township 21 North, Range 03 East and the Northwest Quarter of Section 3, Township 20 North, Range 3 East of the Willamette Meridian;

is hereby vacated, and the land so vacated is hereby surrendered and attached to the property bordering thereon, as a part thereof, and all right or title of the City in and to the portion of the street so vacated does hereby vest in the owners of the property abutting thereon, all in the manner provided by law; provided, however, that there is hereby retained and reserved, pursuant to the statutes of the state of Washington, the following easements, to-wit:

1. ENVIRONMENTAL SERVICES

- a. An easement shall be retained over the entire vacated area for the existing sanitary sewer system. The entire length of the proposed Milwaukee Way vacation contains a 60-inch diameter sanitary sewer outfall for the City of Tacoma's Central Wastewater Treatment Plant, an 18-inch diameter sanitary sewer main, and an 18-inch diameter storm sewer main. The Port of Tacoma will assume ownership of the existing 18-inch diameter storm sewer main. The City will amend the stormwater utility fee currently charged to the Port per TMC Chapter 12.08 based upon the change in ownership.
- b. No permanent structure(s) shall be erected within the public easement area(s) unless specifically approved in writing by the City of Tacoma Environmental Services Director. Permanent structures shall include but not be limited to any concrete foundation, wall, rockery, building, portable sheds, private utilities, fences, or other site improvement that will



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unreasonably interfere with the need to access or construct public storm and/or sanitary sewer utilities in said easement. Permanent structures shall not mean improvements such as normal landscaping, asphalt paving, concrete road paving, gravel, or other similar site improvements that do not prevent the access of men, materials, and machinery across, along, and within the said easement area.

- c. The Port of Tacoma has requested to take over ownership of the existing 18-inch and 21-inch diameter storm sewer mains on Milwaukee Way, noted in SAP as pipe segments 6261437, 6261123, 6263479, 6261354, 6263724, 6261036, and 6266730, and all associated appurtenances. Environmental Services will approve the change of ownership on the condition that a Consent to Encroach for the storm main is required. The consent to encroach may be a part of the easement created for the sanitary sewer mains. The document shall be completed, signed and filed with Pierce County within 15 days after the street vacation becomes effective.
- d. The Port of Tacoma shall allow Tacoma Rail to connect into the storm main in Milwaukee Way at the request of Tacoma Rail subject to the requirements of the City of Tacoma's Stormwater Management Manual.
- e. The Port of Tacoma shall retain and maintain all associated appurtenances to the storm main for roadway drainage purposes within the East 11th Street right-of-way. If the Port of Tacoma elects not to retain any or all of the associated appurtenances, the Port of Tacoma shall reroute the connections to a City of Tacoma storm main at the Port's expense. Reconnection shall meet all City of Tacoma standards and be approved in writing by Environmental Services prior to construction. The Port of Tacoma shall obtain all required permits for work in the City of Tacoma right-of-way.



1 2. TACOMA RAIL

- 2
- 3 a. The property to be vacated is parallel and adjacent to
- 4 Tacoma Rail's South Intermodal Rail (SIM) yard. Currently,
- 5 Tacoma Rail has an existing railroad track crossing in place
- 6 near Lincoln Avenue.
- 7 b. Tacoma Rail shall be granted a perpetual easement over,
- 8 under, across, and through the remainder of the existing
- 9 right-of-way for maintenance, repair, modification, and
- 10 replacement of Rail facilities to include the above-mentioned
- 11 crossing.
- 12 c. The easement shall include unlimited access to the
- 13 easement area, as well as provide for access to Tacoma
- 14 Rail's property as necessary to allow for its railroad
- 15 operations.
- 16 d. To avoid conflicts with existing facilities and access, Tacoma
- 17 Rail shall have review and approval rights for any proposed
- 18 improvements within the easement area.
- 19 e. Any relocation or adjustment of existing Tacoma Rail
- 20 infrastructure requested by the Port shall be done by
- 21 Tacoma Rail at the expense of the Port of Tacoma.
- 22 f. Tacoma Rail shall not be responsible for restoration of Port
- 23 improvements within the easement area as a result of its
- 24 maintenance or construction activity.
- 25 g. Damage to any Tacoma Rail facilities within the easement
- 26 area by the Port of Tacoma or its lessee shall be repaired by
- Tacoma Rail at the expense of the Port of Tacoma.
- h. Any equipment which can be used to load shipping
- containers from trucks onto rail cars is prohibited.

22 3. TACOMA WATER

- 23
- 24 a. The requested vacation area contains major trunk mains
- 25 which supply fire and domestic service to the tide flats
- 26 industrial area and Northeast Tacoma. This includes a
- 24-inch steel main in Milwaukee Way.



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- b. Tacoma Water shall have a perpetual easement over, under, across, and through the existing right-of-way for maintenance, repair, construction, modification, and replacement of existing and future Tacoma Water facilities.
- c. The easement shall include unlimited access to the easement area.
- d. To avoid conflicts with existing facilities and access, Tacoma Water shall have review and approval rights for any proposed improvements within the easement area.
- e. Any relocation or adjustment of existing Tacoma Water infrastructure requested by the Port shall be done by Tacoma Water at the expense of the Port of Tacoma.
- f. Tacoma Water shall not be responsible for restoration of Port improvements within the easement area as a result of its maintenance or construction activity.
- g. Damage to any Tacoma Water facilities within the easement area by the Port of Tacoma or its lessee shall be repaired by Tacoma Water at the expense of the Port of Tacoma.
- h. No permanent structures shall be placed within the easement area.
- i. Due to the potential for damage to Tacoma Water underground infrastructure, no heavy equipment shall be used within the easement area that exceeds legal load requirements in place at the time of the street vacation.
- j. No grading shall be allowed within the easement area without prior consent of Tacoma Water. No removal of material over Tacoma Water infrastructure will be allowed which will produce a depth of cover of less than 3 feet. No filling over Tacoma Water infrastructure shall be allowed which will produce a depth of cover of greater than 5 feet.



1 4. TACOMA POWER

- 2
- 3 a. Tacoma Power has significant overhead and underground
- 4 infrastructure in the area, specifically within the current
- 5 right-of-way. This infrastructure serves properties adjoining
- 6 Milwaukee Way and beyond.
- 7 b. Tacoma Power shall have a perpetual easement over,
- 8 under, across, and through the existing right-of-way as
- 9 currently described for maintenance, repair, modification,
- 10 and replacement of its transmission and distribution
- 11 infrastructure.
- 12 c. The easement shall include unlimited access to the
- 13 easement area at all times.
- 14 d. To avoid conflicts with existing facilities and access, Tacoma
- 15 Power requests review and approval rights for any proposed
- 16 improvements within the easement area.
- 17 e. Any relocation or adjustment of existing Tacoma Power
- 18 infrastructure requested by the Port shall be done by
- 19 Tacoma Power at the expense of the Port of Tacoma.
- 20 f. Tacoma Power will not be responsible for restoration of Port
- 21 improvements within the easement area as a result of its
- 22 maintenance or construction activity.
- 23 g. Damage to any Tacoma Power facilities within the easement
- 24 area by the Port of Tacoma or its lessee shall be repaired by
- 25 Tacoma Power at the expense of the Port of Tacoma.
- 26 h. No permanent structures shall be placed within the
- easement area.
- i. Tacoma Power shall have the right to place and modify
- Tacoma Power facilities, including overhead and
- underground structures, wires, conduits, cables, and
- appurtenant equipment within the easement area without
- prior approval of the Port.



1 5. TACOMA FIRE DEPARTMENT

- 2
- 3 a. Fire Department administrative staff agreed to the Port of
- 4 Tacoma's proposal to vacate Milwaukee between 11th
- 5 Street and Lincoln Avenue 15 years ago, before several
- 6 subsequent Port-sponsored projects further reduced the
- 7 street network within the Port area while increasing rail and
- 8 truck traffic on the remaining roadway.
- 9 b. Because of the previous agreement and because the Port
- 10 used its awareness of the agreement to plan subsequent
- 11 Port development, Fire cannot reasonably refuse to support
- 12 completion of the vacation process.
- 13 c. However, it is apparent to Tacoma Fire that the Port's
- 14 development plans have led to a shortage of usable
- 15 transportation corridors within the Port and its vicinity.
- 16 Those corridors are needed for timely emergency response
- 17 and for evacuation. As a condition of the vacation, the Port
- 18 shall allow access across the vacated portion of Milwaukee
- 19 Way for emergency response and evacuation or provide
- 20 access across an acceptable alternative corridor for those
- 21 purposes.

22 6. PUBLIC WORKS/ENGINEERING DIVISION/LID

23 The parcel has been partially assessed for sewer. An In-Lieu

24 sewer assessment fee for sanitary sewer is due in the amount

25 of \$12,273.66.

26 7. COMCAST

 Comcast is currently attached to Tacoma Public Utility's poles

 throughout the vacation limits. Comcast's easement is currently

 protected under the Master Pole Agreement with TPU and the

 Cable Act.



1 8. CENTURY LINK COMMUNICATIONS

- 2
- 3 a. Century Link has facilities in the area addressed by this
- 4 action and shall retain any and all rights to remain in said
- 5 area and to add facilities in the future as needed.
- 6 b. The provisions of the vacation shall retain Century Link's
- 7 rights by means of an easement containing explicit language
- 8 granting to "Qwest Corporation d/b/a QC and its successors"
- 9 rights that will cover its existing and future facilities.
- c. The easement shall contain a notation stating that Century
- Link shall have 24/7 access to all equipment, and "no cargo
- containers shall be stacked on top of vault lids."

10 9. PUBLIC WORKS/ENGINEERING DIVISION/PLANNING

- 11
- 12 a. The City Public Works Engineering Division has reviewed
- 13 the Applicant's proposed street vacation request for a portion
- 14 of Milwaukee Way lying between East 11th Street and
- 15 Lincoln Avenue. The proposal was reviewed in 2000 with
- 16 limited conditions. Since then, there have been substantial
- 17 changes to the City's arterial street system serving the Port-
- 18 area properties which warrant revisions to the previously
- 19 recommended conditions of approval. In 2011, the Lincoln
- 20 Avenue Grade Separation was constructed to eliminate rail
- 21 and car conflicts. As a result, the overpass limits access to
- 22 Lincoln Avenue from Milwaukee Way. By vacating
- 23 Milwaukee Way north of Lincoln Avenue, the proposal
- 24 creates a dead end, adversely impacting an arterial and
- 25 heavy haul route.
- 26 b. The applicant shall provide a public roadway connection
- from Milwaukee Way to the Lincoln Loop Road. The
- roadway shall be designed to accommodate truck traffic
- commensurate with its anticipated role as a heavy haul
- route. The roadway could include providing a public
- easement over the private drive that connects Lincoln Loop
- Road to Milwaukee Way or improving the roadway adjacent
- to the Lincoln Avenue Grade Separation. If the roadway is



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not a public right-of-way maintained by the City, the easement shall specifically allow Heavy Haul traffic, and must stipulate that the owner maintain the roadway in a condition suitable to support heavy-haul traffic. Construction of the new public roadway connection may require a Work Order.

c. The following amendments to the Tacoma Municipal Code are required to be completed within 180 days of approval of the proposed vacation:

- Delete Milwaukee Way between Lincoln Avenue and East 11th Street from TMC 11.05.540, Forty miles per hour limit – Streets designated.
- Delete Milwaukee Way between Lincoln Avenue and East 11th Street from TMC 11.55.020, Defined Terms, that identifies this section as a “Heavy Haul Industrial Corridor.”
- In the event that the alternate street connection is a Public Highway as defined in TMC 11.55.020, the new connection between Lincoln Loop Road and Milwaukee Way, and Lincoln Loop Road, shall be described in TMC 11.55.020.C.

10. PORT OF TACOMA FIBER OPTIC NETWORK

a. The Port of Tacoma fiber optic network has franchise rights that include a 5.0 foot-wide strip of land lying within the Milwaukee Way right-of-way. This area may fall within the ownership of Tacoma Rail by virtue of the vacation of Milwaukee Way. The Port is negotiating with Tacoma Rail to obtain ownership of the entire right-of-way being vacated, however, the final agreement has not been completed. In order to protect the Port’s interest in its fiber-optic network, an easement shall be executed in favor of the Port covering the 5.0-foot strip of land and allowing its use for the Port’s fiber optic system.



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b. The City will work with the Port of Tacoma to adopt a new Ordinance amending Ordinance No. 28016, relating to cable communications and franchise services, based on the change in ownership.

11. MISCELLANEOUS

The applicant shall comply with all City regulations for any future use of the subject site.

Passed _____

Mayor

Attest:

City Clerk

Location: That portion of Milwaukee Way between East 11th Street and Lincoln Avenue to the Port of Tacoma

Petitioner: City of Tacoma, Port of Tacoma

File No.: 124.1108

Approved as to form:

Property description approved:

Deputy City Attorney

Chief Surveyor
Public Works Department