

July 15, 2021

## MEMORANDUM

**To:** Transportation and Utilities Committee  
**From:** Lish Whitson, Analyst  
**Subject:** Clerk File 314451: Petition of Seattle City Light to vacate a portion of Diagonal Avenue South, west of 4th Avenue South

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On July 21, the Transportation and Utilities Committee (Committee) will hold a public hearing and may vote on [Clerk File \(CF\) 314451](#), a petition from Seattle City Light (SCL) to vacate the westernmost 330 feet of Diagonal Avenue S, west of 4th Avenue S. The vacation of this portion of the street would connect SCL's South Service Station which includes property on both sides of Diagonal Avenue S at this location. The Seattle Department of Transportation (SDOT) and the Seattle Design Commission (SDC) have reviewed the vacation petition in CF 314451 and recommend granting the vacation with conditions.

Public benefits proposed as part of the vacation process include transferring property currently owned by SCL in the Georgetown neighborhood (the "Flume" property) to SDOT and the Seattle Department of Parks and Recreation (Parks) and the development of a bike/pedestrian trail and off-leash area to serve the Georgetown neighborhood and improve pedestrian and bicycle connections between Georgetown and South Park.

This memorandum describes:

1. the street vacation review policies that guide the Council's decision;
2. the proposed vacation of Diagonal Avenue S;
3. the proposed public benefits associated with the proposal; and
4. the conditions proposed to be placed on the vacation.

### Street Vacation Policies

From time to time, property owners seek to permanently acquire the street or alley next to their property from the City. The process to do so is laid out in the Revised Code of Washington [Chapter 35.79](#), Seattle Municipal Code, [Chapter 15.62](#), and the City Council's [Street Vacation Policies](#). In 2018, the City Council updated its street vacation policies to provide greater clarity for petitioners, members of the public and decision-makers in proposing and reviewing street vacation petitions. The policies identify two related but independent questions that the Council must consider in reviewing a street vacation petition:

1. are the "public trust functions" of the right-of-way maintained? and
2. will the public receive a benefit from the vacation?

Public trust functions are the uses of right-of-way. The policies describe the public trust functions as follows:

Streets are dedicated in perpetuity for use by the public for travel, transportation of goods, and locating utilities. The dedication carries with it public rights to circulation, access, utilities, light, air, open space, views, free speech, and assembly, and contributes significantly to the form and function of the city. The primary concern of the City in vacation decisions is to safeguard the public's present and future needs and to act in the public's best interest. (p. 7)

Public benefits are a required component of street vacations to offset loss of public space. The policies describe public benefits as follows:

The City acts as a trustee for the public in its administration of rights-of-way. Courts have required that in each vacation there shall be an element of public use or benefit, and a vacation cannot be granted solely for a private use or benefit. Therefore, before this public asset can be vacated to a private party, there shall be a permanent or long-term benefit to the public.

The fact that these benefits are provided equally to all members of the public may be most important to those who have the least. To best address the needs of the community, a strong focus on race and social equity is important in assessing the public benefits included as part of a street vacation petition.

Proposed vacations may be approved only when they provide a permanent or long-term public benefit. Because the public permanently loses the street, short-term public benefits or public benefits that solely benefit individuals will not be considered. The following are not considered public benefits:

- Mitigating the vacation's adverse effects;
- Meeting code requirements for development;
- Paying the required vacation fee;
- Facilitating economic activity; or
- Providing a public, governmental, or educational service.

While the nature of the project is a factor in deciding the adequacy of a public benefit proposal, it is not itself a public benefit. (p. 22)

After a petitioner files a complete vacation petition, it is sent to SDOT and the SDC for review. SDOT collects comments from City Departments, private utilities, transit agencies, and others with an interest in the City's rights-of-way. After review and recommendation by these parties, the petition is returned and considered by the City Council. The Council is required to hold a public hearing on the petition, and then must act on the petition. State law states that approval of vacations is solely a legislative act.

If the Council decides it is appropriate to vacate the right-of-way, it will typically grant conditional approval. That approval is placed in the CF alongside the vacation petition. That conditional approval allows the petitioner to begin using the right-of-way. After all conditions have been met and all fees have been paid, SDOT will draft an ordinance for Council consideration that authorizes the transfer of ownership of the right-of-way to the petitioner.

### **Vacation of Diagonal Avenue S**

SCL's South Service Center is in Council District 2 in the Duwamish Manufacturing/ Industrial Center. The Service Center is bounded on the north by S Spokane Street, on the east by 4th Avenue S, and on the west by the BNSF railway. It sits between the Spokane Street Viaduct and the Costco Wholesale Store on 4th Avenue S. The south edge of the Service Center is bounded partially by Diagonal Avenue S and partially by a strip of property located on the south side of Diagonal Avenue S. In the area bounded on both sides by Diagonal Avenue S, SCL holds a street use permit from SDOT to use the right-of-way for their operations and has fenced off this section of Diagonal. This is the portion of Diagonal that SCL seeks to vacate.

SCL has petitioned the Council for the vacation of this section of Diagonal Avenue S to justify improvements to this area. In their petition, SCL states:

At this point in time, significant investment in the Diagonal Avenue South property is necessary to improve drainage and pavement, and to provide greater security for the site. City Light also plans to add a temporary tension-fabric structure to the site to provide an indoor venue for the spray coating of steel plates. Some of these improvements are necessary pursuant to a recent site inspection made by the Washington State Department of Ecology. Safety improvements will be constructed in conformance with the standards set forth in City Light's Design and Construction Guidelines for Security Facilities, adopted by City Light's Office of Internal Compliance in 2013. From City Light's perspective, the level of investment necessary is justified only if it owns the property. (CF 314451, Vacation Petition, Page 7)

In their review of the petition, SDOT found that if SCL and Seattle Public Utilities sign a Memorandum of Understanding (MOU) or other agreements allowing for future access to the area to be vacated for SPU facilities, there would be no negative impacts from the vacation to the public trust functions of the right-of-way.

### **Proposed Public Benefits**

In 2018, the [Duwamish Valley Action Plan](#) recommended developing SCL's Flume property into a community asset. That plan describes opportunities available at the Flume as follows:

The Georgetown Steam Plant Flume site was part of an abandoned 2,500-foot-long system of wood- or concrete-lined open ditches and buried pipes that discharged cooling water from the steam plant to the Duwamish River at Slip 4. The site went into disuse once the plant closed in the 1960s. In 2008, Seattle City Light (SCL) cleaned up

contaminants and replaced the flume with piped drainage as part of early actions to clean up the Duwamish River's Superfund site Slip 4.

Opportunities for new open space in Georgetown are limited. During the Georgetown Open Space Vision Framework process, community members identified this site as both an important pedestrian link between S Myrtle St. and East Marginal Way S and a potential location for an Off-Leash Area (OLA). While still a potential site for an interim OLA, there is a greater preference that it be used as a pedestrian link to the Georgetown to South Park Connection. (page 41)

SCL, SDOT, Parks and the Georgetown community members developed a strategy to convert the Flume property into an [Off-Leash Area](#) with a bicycle/pedestrian path that will link to the [Georgetown to South Park Connection](#). This would occur as planned only if the vacation were approved. Improvements would be fully funded through a partnership between the three departments. Georgetown neighbors have indicated support for the proposal.

### **Proposed Conditions**

The Director of SDOT has proposed seven conditions be placed on the vacation of Diagonal Avenue S, as shown on Attachment 1. Key conditions include (1) commitments to transfer the Flume property to SDOT and Parks and develop the trail and off-leash area; and (2) a requirement that utility issues under Diagonal Avenue S be resolved to SPU's satisfaction, including a MOU between SPU and SCL and possible partial transfer of jurisdiction.

If the Committee supports the proposed vacation, it should direct staff to add these conditions to CF 314451 for final consideration at City Council.

### **Next Steps**

The Committee will hold a public hearing and may vote on CF 314451 at its July 21 committee meeting. If the Committee seeks to vote at its July 21 meeting, it should waive the Council Rule that limits committee votes on the same day as a public hearing. If it recommends approval, the legislation could be considered as early as the July 26 City Council meeting.

### **Attachments:**

1. Draft conditions as proposed by SDOT

cc: Dan Eder, Interim Director  
Aly Pennucci, Policy and Budget Manager

**IN THE MATTER OF THE PETITION OF SEATTLE CITY LIGHT  
FOR THE VACATION OF A PORTION OF DIAGONAL WAY SOUTH,  
WEST OF 4TH AVENUE SOUTH  
IN SEATTLE CITY COUNCIL DISTRICT 2 AND  
THE GREATER DUWAMISH MANUFACTURING/INDUSTRIAL CENTER**

CLERK FILE 314451

The City Council hereby grants approval of the petition from Seattle City Light, (“SCL” or “Petitioner”) for Seattle City Light (“SCL” or “Petitioner”) for the vacation of a portion of Diagonal Way South between 4th Avenue South and 2nd Avenue South, described as:

Commencing at the most southwesterly corner of that portion of Diagonal Avenue South vacated under by City of Seattle Ordinance Number 112889, under King County Recording Number 86070I 0965, and amended by City of Seattle Ordinance 113226, under King County Recording Number 8701070967, said point of commencement also being the angle point at the intersection of the westerly and northwesterly lines of Lot 2 of the plat of Fourth and Duwamish Investment Park, recorded under King County Recording Number 8307280903; thence north  $01^{\circ}09'28''$  east along the west line of said vacated Diagonal Avenue South 59.69 feet to a point at the northwesterly corner of the southeasterly portion of said vacated Diagonal Avenue South and true point of beginning;

Thence north  $43^{\circ}14'20''$  east along the northwesterly line of the southeasterly portion of said vacated Diagonal Avenue South 355.61 feet to a point that bears north  $46^{\circ}45'40''$  west and is 40.00 feet distant from a point on the southeasterly margin of Diagonal Avenue South and 38.41 feet northeasterly of the southwest corner of Lot 4, Block 304, of the unrecorded plat of Seattle Tide Lands, said point also being an angle point in said vacated Diagonal Avenue South; thence north  $46^{\circ}45'40''$  west 40.00 feet to the southeasterly line of the northwesterly portion of said vacated Diagonal Avenue South; thence north  $43^{\circ}14'20''$  west along said southeasterly line 311.31 feet to the southwesterly corner of the northwesterly portion of said vacated Diagonal Avenue South; thence south  $01^{\circ}09'28''$  west 59.69 feet to the true point of beginning.

The proposed vacation is 330 feet in length and approximately 40 feet in width (the width tapers) for a total of approximately 13,300 square feet of right-of-way.

The vacation is granted upon the Petitioner meeting the following conditions. The Petitioner shall demonstrate that all conditions imposed on the vacation by the City Council have been satisfied: all utility work relating to the vacation including easements or other agreements is completed; all public benefit elements have been provided; any other agreements or easements have been completed and recorded as necessary; and all fees paid, prior to the passage of the street vacation ordinance.

1. The vacation is granted to allow the Petitioner to build a project substantially in conformity with the project presented to the City Council and for no other purpose. This approval constitutes the substantive Council approval of the vacation, and the Petitioner

may proceed with the permitting and development of the project, consistent with the conditions of this approval.

2. Any street improvements that may be required at the vacation site or at the public benefit site shall be designed to City standards, as modified by these conditions to implement the Public Benefit requirements and be reviewed and approved by SDOT through a Street Improvement Permit, as necessary.
3. The utility issues shall be resolved to the full satisfaction of the affected utility before the final vacation ordinance is approved. Before starting any development activity on the site, the Petitioner shall work with the affected utilities and provide protection for the utility facilities. SPU has a number of lines in the area and has requested a Memorandum of Understanding (MOU) to detail access for service and repair to its current facilities and the need for future facilities. A partial Transfer of Jurisdiction or other accountability measure may be required to implement the agreement. This may include an MOU, easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner.

SPU facilities include:

- 30” sewer main,
  - 132” PSD,
  - 48” PSD; and
  - Need for future new water main in Diagonal Way South.
4. It is expected that development activity at the vacation site will commence within approximately 18 months of this approval and that development activity will be completed within 5 years. To ensure timely compliance with the conditions imposed by the City Council, the Petitioner shall provide SDOT with regular reports, following City Council vacation approval, providing an update on the development activity, schedule, and progress on meeting the conditions and anticipated date of project completion and opening. The Petitioner shall not request or be issued a Final Certificate of Occupancy until SDOT determines that all conditions have been satisfied and all fees have been paid as applicable.
  5. In addition to the conditions imposed through the vacation process, if the project as it proceeds through the permitting process is subject to SEPA review it may be subject to conditioning pursuant to City codes through the regulatory review processes.
  6. The Petitioner shall convey the real property known as the Flume property to Parks and to SDOT as outlined in the signed agreement between the three departments. Once the property is conveyed the receiving department shall bear the responsibility to complete the public amenities and shall be responsible for ongoing maintenance. The SDOT trail

connection shall be open to the public at all times. The Parks off-leash area shall be open and managed consistent with other off-leash areas and the public signage should indicate the hours of operation. Public signage shall be consistent with signage provided at SDOT trails and Park off-leash areas. The signage shall be clearly visible to the public. The property transactions to convey the real property must be completed before SCL may proceed with the final vacation ordinance.

7. Parks and SDOT shall be responsible for the process to meet with the community and complete the final design of the trail connection and the off-leash area and securing any necessary permits. The final design of the public benefit elements and schedule for construction shall be provided to SDOT Street Vacations to demonstrate compliance with the vacation conditions. SDOT Street Vacations may require additional review by the Design Commission if any significant changes are proposed. The public benefit requirements are outlined in the following chart.

**PUBLIC BENEFIT MATRIX**

Public Benefit Element	Department Cost Sharing Obligations			
	SPR	SDOT	SCL	Total
Site preparation			\$480K	
Off Leash Area <ul style="list-style-type: none"> <li>• Pedestrian access,</li> <li>• Benches,</li> <li>• Water to site, and</li> <li>• ½ stormwater treatment</li> </ul>	\$400K		\$195K	\$595K
Bike and Pedestrian Trail: <ul style="list-style-type: none"> <li>• Street improvements,</li> <li>• Lighting,</li> <li>• Trees, &amp;</li> <li>• ½ stormwater treatment</li> </ul>		\$400K	\$1.283M	\$1.683M
Total development costs	\$400K	\$400K	\$1.958M	\$2.758M
Property transfer: <ul style="list-style-type: none"> <li>• Total: Approx. 46,338 sq ft</li> <li>• Property to Parks for Off Leash Area: 36,626 sq ft</li> <li>• Property to SDOT for Bike and Pedestrian Trail: 9,712 sq ft</li> </ul>			\$1.854M	\$1.854M
Grand total	\$400K	\$400K	\$3.812M	\$4.612M

Granted by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of  
\_\_\_\_\_, 2021.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

DRAFT