

**ORDINANCE NO. 1110**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY GIG HARBOR, WASHINGTON, VACATING THE PORTION OF PRENTICE AVENUE AND BENSON STREET, LYING BETWEEN WOODWORTH AVENUE AND PEACOCK HILL AVENUE AS INCLUDED IN THE STREET VACATION FROM DOUGLAS & ANNETTE SMITH, 9504 WOODWORTH AVENUE, GIG HARBOR, WASHINGTON.**

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WHEREAS, Douglas and Annette Smith of 9504 Woodworth Avenue, Gig Harbor, Washington, petitioned the City to vacate a portion of Prentice Avenue and Benson Street (originally platted as Norton and Chester Streets), which abuts their property, under the nonuser statute and GHMC Section 12.14.018(C); and

WHEREAS, the portion of these streets subject to the vacation petition were platted in the Plat of Woodworth's Addition, recorded in the records of Pierce County on August 22, 1890; and

WHEREAS, in 1890, these streets were in unincorporated Pierce County; and

WHEREAS, the portions of Prentice Avenue and Benson Street subject to the vacation petition were not included in any street that was opened or improved within five years of the original platting in 1890; and

WHEREAS, under the nonuser statute, any county road which remained unopened for public use for five years after platting was vacated by lapse of time; and

WHEREAS, the City's street vacation procedures for streets subject to the nonuser statute merely eliminates the cloud on the title created by the plat, because the street has already vacated by lapse of time; and

WHEREAS, after receipt of the street vacation petition, the City Council passed Resolution No. 729 initiating the procedure for the vacation of the referenced street and setting a hearing date; and

WHEREAS, after the required public notice had been given, the City Council conducted a public hearing on the matter on October 22, 2007, and at the conclusion of such hearing determined that the aforementioned right-of-way vacated by operation of law and lapse of time; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. The City Council finds that the unopened portion of the platted Prentice Avenue and Benson Street right-of-way described in the Smith vacation petition has vacated by lapse of time and operation of law under the Laws of 1889-90, Chapter 19 (Relating to County Roads), Section 32, p. 603, as Amended By Laws of 1909, Chapter 90, Section 1, p. 189, repealed in 1936 by the Washington State Aid Highway Act (Laws of 1936, Chapter 187, p. 760). The vacated portion of Prentice Avenue and Benson Street, lying between Woodworth Avenue and Peacock Hill Avenue, abutting north property frontage of Parcel No. 9815000231, is legally described in Exhibit A, attached hereto and incorporated by this reference and as shown in the map attached hereto in Exhibit B.

Section 2. The City has the authority to adopt a vacation ordinance to formally remove the cloud on the title of the referenced right-of-way area, but this street vacation ordinance does not affect any rights anyone, including the public may have acquired in the right-of-way since the street was vacated by operation of law.

Section 3. The City Clerk is hereby directed to record a certified copy of this ordinance with the office of the Pierce County Auditor.

Section 4. This ordinance shall take effect five days after passage and publication as required by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 13<sup>th</sup> of November, 2007.

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Charles L. Hunter, Mayor

ATTEST/AUTHENTICATED:

By: \_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney:

By: \_\_\_\_\_  
Carol A. Morris

FILED WITH THE CITY CLERK: 10/18/07  
PASSED BY THE CITY COUNCIL: 11/13/07  
PUBLISHED: 11/21/07  
EFFECTIVE DATE: 11/26/07