

PROCEDURE FOR VACATING STREETS, ALLEYS AND EASEMENTS

Public streets, alleys and easements can be vacated only by action of the City Commission, and only after a public hearing has been conducted upon certain notice being given. The process of vacating a street, alley or easement involves the following steps:

1. Staff review by the City's engineering department.
2. Obtaining certification of the owners of all affected properties.
3. Submitting a Petition and Consents to the City Commission.
4. Publishing a Notice of Hearing on the vacation request.
5. Conduct of a public hearing on the request by the City Commission.
6. Passage and publication of an Ordinance granting the vacation.
7. Payment of costs by applicant.

1. Staff Review

As an initial first step prior to filing a Petition for the vacating of any street, alley or public utility easement, interested parties are encouraged to discuss the matter with the City's engineering and public works staff to determine whether there are any concerns or problems with the request, and whether there are any public easements or interests the City may need to retain as a condition to the vacation being granted. City staff can also assist in developing the legal description of the street, alley or easement that is the subject of the request, which will be needed for the related legal documents.

For an initial review to be conducted by the City's engineering and public works staff, please contact Suzanne Loomis, City Engineer, at 284-6020.

2. Obtaining Title Verification

It is the applicant's responsibility to obtain and provide to City staff an abstractor's certificate showing the owners of all properties that are adjacent to the street, alley or easement that is sought to be vacated. This must be obtained from an abstract or title company and signed by a licensed abstractor. This title verification is necessary to determine to whom notice must be sent as to the hearing on the request, and to determine whether any protest received presents a legal barrier to the granting of the request. A street, alley or easement cannot be vacated over the objection of an adjacent property owner.

3. Submitting a Petition and Consents

A request for such a vacation is initiated by the filing of a Petition For Vacation with the City. This should be submitted to the office of the City Attorney in City Hall at 201 E. 6th, 2nd floor (P.O. Box 426) in Newton (284-6018). If the necessary information is provided to the City Attorney's office, he will prepare the necessary Petition and any needed Consents for the applicant's use.

The Petition must be signed by the applicant. The Petition can be prepared to include approval signatures by other adjacent property owners. In the absence of an adjacent property owner signing the Petition, a Consent form can be used to show adjacent property owner approval.

Applicants are strongly advised to obtain the approval or consent of each of the adjacent property owners. Otherwise, if at or prior to the hearing on the request the City receives a written objection to the vacation by an adjacent property owner, the City cannot grant the vacation.

The Petition must contain a commitment by the applicant to pay all publication costs and filing fees associated with the request. The notice publication costs must be reimbursed to the City even should the request be denied. The publication costs are approximately \$50 for the notice of hearing and approximately \$70 for the Ordinance granting the vacation. Also, an Order of Vacation must be filed with the Register of Deeds, with a filing fee of approximately \$8.00. The City will handle the arrangement for the publications and filing, and will bill the applicant for these costs.

4. Publishing a Notice of Hearing

The City Commission meets on the second and fourth Tuesdays of the month at 7:00 p.m. A notice of the hearing on the request must be published not less than 20 days prior to the City Commission meeting at which the hearing will be conducted. For a vacation request to be put on a particular meeting agenda, the signed Petition, the property owner certification and any necessary Consents must be submitted to the City Attorney at least 25 days prior to any such meeting.

5. Conduct of Public Hearing by the City Commission

The City Commission will conduct a public hearing on the request as part of a regular City Commission meeting. A report will be given on the request by City staff, and the applicant and any other interested party will be entitled to speak on the matter. The City Commission will consider whether the current or long-range plans of the City would be best served by keeping or vacating the street, alley or easement, and whether vacating the easement could cause any undue hardship to any citizens, property users or owners.

If the City Commission determines there is a need for the City to retain a certain public easement in this area, that easement might be retained as part of the vacation.

6. Passage and publication of an Ordinance

If the City Commission decides the street, alley or easement should be vacated, this action is done in the form of an Ordinance that is adopted by the City Commission. The City Attorney is responsible for preparing any such Ordinance. This action is also represented by an Order of Vacation, which the City Commission would also approve and which would then be filed with the Harvey County Register of Deeds to establish in the real estate records that the street, alley or easement has been vacated.

7. Payment of Costs by Applicant

As noted above, the applicant is responsible for the payment of all costs associated with the vacation procedure. In summary, those costs include: (a) the abstracting cost of obtaining proof of the ownership of all adjacent properties; (b) the cost of publishing the notice of the public hearing; (c) the cost of publishing the approving Ordinance; and (d) the cost of recording the Order of Vacation with the Harvey County Register of Deeds.

The applicant must pay the abstracting cost directly to the abstract or title company. The other costs are incurred by the City and will be billed to and must be reimbursed by the applicant.