

(ORD #7-21(2))

Chapter 44—Vacation of Right-of-Way and Public Easements

44.010 Right-of-way and Public Easement Vacation With Utilities.

- A.** If the City considers the vacation of a right-of-way, including unimproved streets and alleys, which contains the facilities of a utility service provider, and if the vacation does not require the relocation of the service provider's facilities, then the City shall reserve, for itself and all service providers having facilities in the right-of-way, an easement for the right to install, maintain, and operate any facilities in the vacated right-of-way and to enter upon such vacated right-of-way at any time for the purpose of reconstructing, inspecting, maintaining, or repairing the same.
- B.** Procedure for vacation of right-of-way and public easements are outlined in Section 2.
- C.** The City should carefully evaluate any vacation requests that involve the relocation of facilities, taking into account utility providers, utility services to customers, future growth, etc.; however, if a vacation request that requires the relocation of facilities is approved, then the costs for said relocation shall be paid as follows:
- 1.** If the vacation proceedings are initiated by the service provider, then the service provider must pay the relocation costs.
 - 2.** If the vacation proceedings are initiated by the City, then the service provider must pay the relocation costs unless otherwise agreed to by the City and the service provider.
 - 3.** If a property owner initiates the vacation proceedings, then the property owner must pay the relocation costs.

44.020 Process and Procedures for Vacation of Right-of-way and Public Easements.

The following process and procedures are required for considering the vacation of right-of-way, including unimproved streets and alleys, and public easements:

- 1.** Submission of an application packet, which shall include the following:
 - a.** Submit a petition to the City Clerk for a hearing before the Planning and Zoning Commission and City Council for the proposed vacation. The petition must be signed by all property owners whose property abuts the proposed right-of-way vacation or on whose property the easement lies. The petition shall state the names of the persons requesting the petition and state the legal description of the right-of-way or easement proposed to be vacated. The petition shall be on a form promulgated by the City Clerk.
 - b.** A non-refundable filing fee of one hundred dollars (\$100.00) plus the cost of legal publication and the Johnson County recording fee, as determined by the City Clerk.

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- c. Provide an Assessor's map showing the area proposed to be vacated.
 - d. Provide a legal description for the area proposed to be vacated.
 - e. Provide a written explanation of why the right-of way or easement should be vacated.
 - f. Provide letters from all utility companies with an interest in the right-of-way or easement at issue approving of the proposed vacation.
2. The Planning and Zoning Commission shall then schedule and hold a public hearing upon said petition. At least fifteen (15) days' advance notice of the time and place of the public hearing shall be published in an official paper or paper of general circulation in the City. All parties in interest and citizens shall have an opportunity to be heard at the public hearing.
3. Following a hearing before the Planning and Zoning Commission, the application packet, along with a recommendation from the Planning and Zoning Commission, shall be submitted to the City Council for the consideration of an ordinance.
- 1. If approved by the City Council, the City Clerk shall submit the ordinance to the Johnson County Recorder of Deeds for recording, and also execute any other necessary documentation to effectuate the City Council's approval. Disapproval by the City Council requires no further action.
 - 2. Whenever any petition submitted under this Chapter has been finally acted upon by the City Council under the provisions of this Chapter, and the decision of the City Council has been averse to the applicant, neither the Planning and Zoning Commission nor the City Council shall, for a period of six (6) months from the date of the City Council's decision, consider any similar petition seeking the same or similar relief as requested in the petition first denied.