

88-560 VACATION OF STREETS, ALLEYS AND PLATS

88-560-01 INTENT

The Council may approve a vacation of all or a portion of any street, alley or plat only when it determines that no private rights will be unreasonably injured or endangered by the vacation and the public will suffer no unreasonable loss or inconvenience thereby.

88-560-02 POWER TO VACATE STREETS AND PUBLIC PLACES

The city shall have exclusive control of all its public highways, streets, alleys, boulevards, parkways and public places, and shall have exclusive power to vacate or abandon any public highway, street, alley or public place, or any part thereof, and to vacate any platted addition or subdivision of land or part thereof with the corporate boundaries of the city; provided, that no such vacation or abandonment shall take place except by ordinance; and provided further, that no such ordinance shall be passed or take effect unless and until the recommendation of the city plan commission, approving or disapproving such ordinance, shall have been given to the council.

88-560-03 AUTHORITY TO FILE

Any person or corporation owning any property fronting or abutting on any public highway, street, avenue, alley, right-of-way, public place or part thereof, proposed to be vacated, may petition the Council therefor. The owner or owners of any lot in any platted subdivision within the corporate boundaries of the city may petition the council for vacation of the said platted addition or subdivision or any part thereof.

88-560-04 PREAPPLICATION CONSULTATION

A preapplication consultation is required in accordance with 88-505-02 prior to filing an application for vacation of any public highway, street, avenue, alley, right-of-way, public place or part thereof, and for vacation of any platted addition or subdivision of land, or part thereof.

88-560-05 APPLICATION FILING

88-560-05-A. A complete application for vacation of streets, alleys, or plats, or part thereof, must be filed with appropriate personnel in the city planning and development department. An application for vacation of streets, alleys and plats, or part thereof, must be accompanied by a legal description prepared by a licensed surveyor, unless otherwise waived by the director of city planning and development, describing the right-of-way, or any part thereof, or platted addition or subdivision of land, or part thereof, proposed to be vacated; a written description of why the vacation is being requested; a plan showing future development, if applicable; and a map portraying the right-of-way, or any part thereof, or plat, or part thereof, proposed to be vacated.

88-560-05-B. The city may initiate the vacation of unconstructed streets, alleys, and plats.

88-560-06 PETITION, CONSENT AND UTILITY COMMENT

Within 14 days after a complete application for vacation of streets, alleys and plats is filed the applicant will be supplied with petition, consent and utility comment forms.

88-560-06-A. Petition to Vacate

- The applicant must give the names of the persons or corporations owning property fronting or abutting on that part of the right-of-way, street, alley, public place, or part thereof, proposed to be vacated, or of the legal owners of all lots contained in such addition or subdivision, or part thereof, proposed to be vacated. Such petition shall be verified by affidavit.
- No petition is required for a city-initiated vacation.

88-560-06-B. Consent to Vacate

- The applicant shall provide the consent, in writing, of the persons or corporations owning three-quarters of the front feet of the property fronting on that part of the public highway, street avenue, alley, right-of-way, or public place proposed to be vacated, acknowledged as deeds conveying real estate in this state are required to be acknowledged in order to entitle them to be recorded. The applicant shall provide the consent, in writing, of the legal owners of all lots contained in such addition or subdivision so proposed to be vacated, acknowledged as deeds conveying real estate in this state are required to be acknowledged in order to entitle them to be recorded.
- No consent is required for a city-initiated vacation.

88-560-06-C. Utility Comment

- The applicant shall provide completed utility comment forms of any utility company given the right to locate utilities in city right-of-way.
- Any condition provided by the utility companies may be included as a condition of vacation. In no case shall a utility company's comments prevent the city from vacating public right-of-way.

88-560-07 NOTICE OF HEARING

88-560-07-A. Notice of the city plan commission hearing shall be mailed by United States mail, first class, to any property owner within the subject site and within 185 feet of the subject site. The notice shall be mailed not less than 13 days before the date set for such hearing. The names of property owners shall be determined as the owners of records according to the records of the city.

88-560-07-B. For city initiated vacations, the department requesting the vacation shall provide notice of the request, by mail, to each adjoining property owner and any registered neighborhood organization and/or registered civic organization, the boundaries of which include the right of way to be vacated, at least 13 days prior to any city plan commission, if required, or city council committee hearing on the vacation ordinance.

88-560-08 CITY PLAN COMMISSION

88-560-08-A. Any city-initiated vacation of any unimproved right-of-way which is not part of the major street plan and which is not used for access to any property will not require a hearing or recommendation of the commission.

88-560-08-B. The city plan commission must review the vacation and determine if the proposed vacation is in the public interest and that no private rights will be unreasonably injured or endangered and the public will suffer no unreasonable loss or inconvenience thereby. The city plan commission shall recommend that the vacation be approved, approved with conditions or disapproved.

88-560-09 REVIEW AND ACTION – CITY COUNCIL

88-560-09-A. Within two years of the date of city plan commission’s recommendation, the vacation must be submitted to the city council. Failure to submit the vacation within this two-year period will cause the city plan commission’s recommendation to lapse and be of no further effect. In this event, resubmission to the city plan commission will be required before the vacation may be submitted to city council.

88-560-09-B. Following action by the city plan commission, the city council must review the vacation and the recommendations of staff and city plan commission, and determine if the proposed vacation is in the public interest, and that no private rights will be unreasonably injured or endangered and the public will suffer no unreasonable loss or inconvenience thereby. No ordinance vacating any public highway, street, alley, public place or platted addition or subdivision, or part thereof, shall be passed except by at least a two-thirds affirmative vote of the full authorized membership of the council.

88-560-09-C. An ordinance approving a final plat may simultaneously vacate rights-of-way for which all abutting properties are located within the plat, and where the city council shall have previously approved a preliminary plat or plan requiring such vacation. Such ordinances must be approved by a two-thirds affirmative vote of the full authorized membership of the council. and no notice and/or advertisement beyond that required of final plats is needed.

88-560-10 APPROVAL CRITERIA FOR VACATIONS

In order to determine that no private rights will be unreasonably injured or endangered by the vacation and the public will suffer no unreasonable loss or inconvenience, the following criteria will be considered:

88-560-10-A. All property owners adjacent to the right-of-way shall have legal access to another public right-of-way. Such access shall be physically feasible and shall not result in an unreasonable burden or unsafe conditions on the alternate right-of-way.

88-560-10-B. The retention of the public right-of-way or subdivision serves no current purposes and no future useful public purpose is anticipated.

88-560-10-C. The vacation will not result in a violation of 88-405.

88-560-10-D. The vacation shall not disrupt the constructed street network.

88-560-10-E. The vacation shall not result in a dead-end street or alley.

88-560-10-F. The vacation shall not result in street traffic being routed through an alley.

88-560-10-G. The vacation shall not vacate half the width of a street or alley.

88-560-10-H. The right-of-way to be vacated is not on the Major Street Plan.

88-560-11 PREREQUISITES TO RECORDING A VACATION

Prior to recording a vacation, the developer must install all required public improvements or post a financial guarantee of performance in a form established by the city.

88-560-12 LAPSE OF APPROVAL

The applicant must file completed petition forms, consent forms and utility comment sheets with the city planning and development department within two years of submitting the initial application.

- **Chapter 75 - VACATION OF STREETS, ALLEYS, PLATS AND EASEMENTS**

- **~~Sec. 75-1. Power to vacate streets and public places; approval of city plan commission.~~**

~~(a)~~

~~The city shall have exclusive control of all its public highways, streets, alleys, boulevards, parkways and public places, and shall have exclusive power to vacate or abandon any public highway, street, alley or public place, or any part thereof, and to vacate any platted addition or subdivision of land or part thereof within the corporate boundaries of the city; provided, that no such vacation or abandonment shall take place except by ordinance; and provided further, that no such ordinance shall be passed or take effect unless and until the recommendation of the city plan commission, approving or disapproving such ordinance, shall have been given to the council.~~

~~(b)~~

~~The Council may approve a vacation only if it determines that:~~

~~(1)~~

~~No private rights will be unreasonably injured or endangered by the vacation;
and~~

~~(2)~~

~~The public will suffer no unreasonable loss or inconvenience thereby.~~

~~(Ord. No. 070265, § 2, 3-15-07)~~

- ~~**Sec. 75-2. — Petition to vacate.**~~

~~Any person or corporation owning any property fronting or abutting on any public highway, street, avenue, alley or public place or part thereof, proposed to be vacated, may petition the council therefor. Such petition must give a correct description of the part of the public highway, street, avenue, alley or public place sought to be vacated and also the names of the persons or corporations owning or claiming the property fronting thereon, and be verified by affidavit. The owner or owners of any lot in any platted addition or subdivision within the corporate boundaries of the city may petition the council for the vacation of the said platted addition or subdivision or any part thereof. Said petitioner must give a correct description of the part of the addition or subdivision to be vacated, and also the names of all legal owners of all lots contained in such addition or subdivision or part thereof to be vacated, and be verified by affidavit. No petition is required for a city-initiated vacation.~~

~~(Ord. No. 070265, § 2, 3-15-07; Ord. No. 141022, § A, 12-11-2014)~~

- ~~**Sec. 75-3. — City plan commission hearing.**~~

~~(a)~~

~~The city plan commission will hear the application for vacation and make a recommendation to the city council thereon; provided, however, that the vacation of any unimproved right of way which is not part of the major street plan and which is not used for access to any property will not require a hearing or recommendation of the commission.~~

~~(b)~~

~~Notice of the city plan commission hearing shall be mailed by United States mail, first class, to any property owner within the subject site and within 185 feet of the subject site. The notice shall be mailed not less than 13 days before the date set for such hearing. The names of property owners shall be determined as the owners of records according to the records of the city.~~

~~(Ord. No. 141022, § A, 12-11-14)~~

~~**Editor's note** — Ord. No. 141022, § A, adopted December 11, 2014, amended the Code by repealing former § 75-3 and adding a new § 75-3. Former § 75-3 pertained to notice, and derived from Ord. No. 070265, adopted March 15, 2007.~~

- ~~**Sec. 75-4. — Consent required.**~~

~~The petitioner for vacation shall provide with the petition the consent, in writing, of the persons or corporations owning three quarters of the front feet of the property fronting on that part of the public highway, street, avenue, alley or public place proposed to be vacated, or of the legal owners of all lots contained in such addition or subdivision so proposed to be vacated, acknowledged as deeds conveying real estate in this state are~~

~~required to be acknowledged in order to entitle them to be recorded, shall have been obtained to such vacation, and filed with said petition in the city clerk's office. No consent is required for a city-initiated vacation, but the department requesting the vacation shall provide notice of the request, by mail, to each adjoining property owner and any registered neighborhood organization and/or registered civic organization, the boundaries of which include the right of way to be vacated, at least 13 days prior to any city council committee hearing on the vacation ordinance.~~

~~(Ord. No. 070265, § 2, 3-15-07; Ord. No. 141022, § A, 12-11-2014)~~

- ~~• **Sec. 75-5. - Two-thirds vote of council required.**~~

~~No ordinance vacating any public highway, street, alley, public place or platted addition or subdivision, or part thereof, shall be passed except by at least a 2/3 affirmative vote of the full authorized membership of the council, except as provided for in section 75-8.~~

~~(Ord. No. 070265, § 2, 3-15-07)~~

- ~~• **Sec. 75-6. - Ordinance to be acknowledged.**~~

~~Every ordinance vacating any public highway, street, alley, public place, or platted addition or subdivision or part thereof, shall be acknowledged by the city clerk as deeds are acknowledged, and such ordinance so acknowledged shall be filed for record in the office of the recorder of deeds in the county or counties in which the vacation is located.~~

~~(Ord. No. 070265, § 2, 3-15-07; Ord. No. 141022, § A, 12-11-2014)~~

- ~~• **Sec. 75-7. - Vacation may be conditional.**~~

~~The council may provide in any ordinance for vacating any highway, street, alley, public place or plat any conditions it deems appropriate and may reserve any appropriate easements.~~

~~(Ord. No. 070265, § 2, 3-15-07)~~

- ~~• **Sec. 75-8. - Vacation by plat.**~~

~~An ordinance approving a final plat may simultaneously vacate rights of way for which all abutting properties are located within the plat, and where the city council shall have previously approved a preliminary plat or plan requiring such vacation. Such ordinances need only be approved by a simple majority vote of the council, and no notice and/or advertisement beyond that required of final plats is needed.~~

~~(Ord. No. 070265, § 2, 3-15-07)~~

- ~~**Sec. 75-9. -- Deposit and fees for vacation of street or public place.**~~

~~(a)~~

~~A fee in the amount of \$290.00 for the vacation shall be paid to the city at the time of petition.~~

~~(b)~~

~~The city manager shall have the authority to adjust the fee listed above to reflect the change in the consumer price index (all items/all urban consumers/Kansas City, Missouri/Kansas) published by the United States Department of Labor, Bureau of Labor Statistics. The adjustments, if any, shall be made annually by the city manager in conjunction with the adoption of the annual budget of the city by filing a notice with the city clerk.~~

~~(Ord. No. 070265, § 2, 3-15-07; Ord. No. 080766, § 1, 8-14-08; Ord. No. 141022, § A, 12-11-2014)~~

- **Sec. 75-10. - Release of easements; fees.**

(a)

The city may release any city easement (other than for a street or public place) by ordinance or by such other procedure provided in this Code of Ordinances. The procedures in this chapter for vacation of streets and public places and plats shall not apply to the release of such easements.

(b)

Any person filing an application for the release of all or part of an easement (other than a street or public place) within the city, shall pay a fee in the amount \$116.00 per easement to the city at the time the application is filed to defray the cost incurred by the city development department for review and processing.

(c)

The city manager shall have the authority to adjust the fees listed above to reflect the change in the consumer price index (all items/all urban consumers/Kansas City, Missouri/Kansas) published by the United States Department of Labor, Bureau of Labor Statistics. The adjustments, if any, shall be made annually by the city manager in conjunction with the adoption of the annual budget of the city by filing a notice with the city clerk.

(Ord. No. 141022, § A, 12-11-14)

Editor's note— Ord. No. 141022, § A, adopted December 11, 2014, amended the Code by repealing former § 75-10 and adding a new § 75-10. Former § 75-10 pertained to deposit receipts and disposition of deposit, and derived from Ord. No. 070265, adopted March 15, 2007.

- **Secs. 75-11, 75-12. - Reserved.**

Editor's note— Ord. No. 141022, § A, adopted December 11, 2014, amended the Code by repealing former §§ 75-11 and 75-12 in their entirety. Former § 75-11 pertained to

payments from vacation fund; return of excess money to depositor; and derived from Ord. No. 070265, adopted March 15, 2007. Former § 75-12 pertained to release of easements and licenses; fees; and derived from Ord. No. 070265, § 2, adopted March 15, 2007; Ord. No. 080766, adopted August 14, 2008; and Ord. No. 110718, adopted September 3, 2011.