



PUBLIC STREET, ALLEY, AND EASEMENT VACATION POLICY

Qualified Public Property:

In order for public property to qualify for vacation, a Petition for Vacation of the property must include all contiguous property from one natural starting point and continuing through a natural ending point as such points are defined and approved by the City Planner. For example, a Petition for Vacation of an alley will not be accepted for the area of an alley behind only one or more lots abutting the alley; rather, the Petition for Vacation must include the entire alley from one entrance to the alley off of another public way and continuing through an alternate entrance to the alley off of another public way or the end of the alley.

Only public streets, alleys, and easements qualify for vacation under this policy.

Effect of Vacation:

In the event vacation of a public street, alley, or easement is granted, the public's interest in the property will be relinquished and, subject to other interests, full property rights will return to the owner of the underlying fee interests. Although the City of St. Joseph may express its intent that the Petitioner or other property owners receive interests in certain property as a result of vacation, the City will not warrant or otherwise guarantee the interest that any property owner will receive as a result of vacation.

Qualified Petitioners:

Only property owners who will gain a property interest or who own property that will become less encumbered as a result of vacation of a public street, alley, or easement may petition for such vacation.

Vacation Steps:

The following steps describe the requirements to petition the City of St. Joseph for the vacation of public streets, alleys, and easements. In extraordinary circumstances, deviations from the requirements stated in these steps may occur or other requirements may be added in order to preserve the public's interest in public property.

- 1. Drawing of Public Street, Alley, or Easement Proposed for Vacation.** The Petitioner seeking vacation of a street, alley, or easement must, at his or her sole expense, prepare a drawing and description of the street, alley, or easement proposed for vacation. In the event the City Planner determines that a drawing and legal description prepared by a professional surveyor will be necessary in order to clearly describe the limits of the proposed vacation, the Petitioner must, at his or her sole expense, have such drawing and legal description prepared by a professional surveyor licensed in the State of Missouri.
- 2. Utility Release.** The Petitioner must provide a utility release or, in the alternative, a letter from all utility companies operating in the City, and all other then-current users of the property proposed for vacation, stating that each such utility or then-current user:

- a. has no objection to the proposed vacation and requires no reservation of an easement or other interest;
- b. requires an easement or other interest be reserved in the vacation ordinance; or
- c. requires an easement or other interest be recorded with the County Recorder of Deeds to protect the utility's or user's existing and future facilities.

In the event any utility company or other user of the property proposed for vacation requires reservation of an easement or other interest in the vacation ordinance or requires that an easement or other interest be recorded with the County Recorder of Deeds, the Petitioner must provide a legal description of such easement(s) with a written approval of the legal description signed by a representative of the utility company or then-current user of the property on which the easement will remain. Such easement must be reserved in the vacation ordinance as a public utility easement.

3. Vacation Consent. The Petitioner must obtain an executed and notarized Vacation Consent Form from owners of record who have a legal interest in property abutting the property that is subject to vacation. Each Vacation Consent Form must have attached copies of the drawing and description of the street, alley, or easement proposed for vacation. If such drawing and description were required to be prepared by a professional surveyor, such drawing and legal description must be prepared by a professional surveyor licensed as such in the state of Missouri must be attached to the Vacation Consent Form. The Petitioner must provide Vacation Consent Forms from:

- a. ALL owners of record who have a legal interest in, and reside on, property abutting the property that is subject to vacation;
- b. AT LEAST SEVENTY-FIVE PERCENT (75%) of all owners of record who have a legal interest in property abutting the property that is subject to vacation; and
- c. ALL OTHER USERS of the street, alley, or easement proposed for vacation that are identified by the City Planner.

Notwithstanding the fact that less than all owners of abutting property may be required to consent to vacation of a public property, the Petitioner shall, nonetheless, notify ALL owners of record who have a legal interest in such abutting property of the intent to file a Petition for Vacation. The Petitioner shall further provide a copy of the Vacation Consent Form and copies of the drawing and descriptions (prepared by a professional surveyor licensed in the state of Missouri if so required by the City Planner) with such notice. The Petitioner must maintain proof that such notice was provided by certified or registered mail.

In the event the Petitioner cannot contact an owner of record who has a legal interest in property abutting property that is subject to vacation, he or she may provide a notarized statement in affidavit form describing attempts to contact such person(s) and reasons he or she has been unable to successfully contact such persons (e.g. death, no readily-available mailing address, incapacity). Such an affidavit is not sufficient, however, to overcome the requirement that owners who have been successfully notified agree to execute Vacation Consent Forms.

All notifications and consents must be made and obtained in good faith and within a reasonable time (but in no event more than one year) before a Petition for Vacation is filed.

- 4. Petition for Vacation.** The Petitioner must prepare a Petition for Vacation including the following information:
- a. identity of the Petitioner;
 - b. mailing address of the Petitioner;
 - c. mailing address (if any) of property owned by the Petitioner that will be enlarged or become less encumbered as a result of vacation of a public street, alley, or easement;
 - d. general description of the property the Petitioner seeks to have vacated (e.g. “an alley from 31st Street to 32nd Street running parallel to and between Sycamore Street and Maple Street”) and, if so required by the City Planner, a drawing and legal description prepared by a professional surveyor licensed as such in the state of Missouri;
 - e. general description of property owned by the Petitioner that will be enlarged or become less encumbered as a result of vacation of a public street, alley, or easement;
 - f. (i) names and mailing addresses of all persons entitled to notice pursuant to this policy, (ii) the general description of each such persons’ property interests that entitle them to such notice, and (iii) a statement as to whether each such person resides on property abutting the public street, alley, or easement proposed for vacation;
 - g. names of any persons entitled to notice pursuant to this policy who the Petitioner claims he or she was unable to contact;
 - h. list of utility companies or other then-current users of the property proposed for vacation who have executed utility releases or letters describing their releases or reservations of easements that must be maintained;
 - i. description of the reason the Petitioner is requesting vacation;
 - j. description of the intended use of the property that is subject to vacation following such vacation;
 - k. incorporation, by reference, of all attached exhibits;
 - l. statement saying “The Petitioner prays that the City Council of the City of St. Joseph, Missouri, vacate property requested herein, [general description of the property interest vacated (e.g. “an easement”)], as set forth in detail and previously described in this Petition, and the Petitioner further prays that the property requested herein for vacation, shall revert to the Petitioner, who is the owner in fee simple of property adjoining or abutting this proposed vacation, as well as all those holding any other reversionary interests, and ordain such further orders as may be proper to accomplish the vacation prayed”;

- m. signature(s) of the Petitioner;
- n. date of Petition;
- o. notary block signed by a notary public attesting to the signature of the Petitioner.

The Petition for Vacation must also include, as attachments, the following:

- a. drawing and description (legal description prepared by a professional surveyor licensed as such in the State of Missouri if so required by the City Planner) depicting and describing the street, alley, or easement proposed for vacation;
- b. Vacation Consent Forms (with attached drawing and legal descriptions of the property subject to vacation) from all property owners from whom such forms were received;
- c. any affidavits describing attempts to reach persons entitled to notice, but unreachable, and reasons such persons could not be successfully notified;
- d. utility release or letter from all utility companies operating in the City, and all other then-current users of the property proposed for vacation, stating any interests such utilities or users require to be reserved or conveyed; and
- e. legal descriptions of easements to be retained by or conveyed to utility companies, other users, or the City, and written approvals signed by a representative of the utility company or then-current user of the property on which the easement will remain.

The City Planner may, in his or her sole discretion, also require proof of mailing of all notices required by this policy.

The Petition for Vacation and all attachments must be submitted to the City Planner with a non-refundable filing fee as set forth in the Code of Ordinances.

- 5. Petition for Vacation Verification.** Upon verification that all required documents and verifications have been provided and the filing fee has been paid, as required by this policy, the City Planner will provide a copy of the Petition for Vacation to the Director of Public Works and Transportation and the City Attorney for review and comment. If such required documents and verifications have not been provided or are incomplete, or if the filing fee is not paid in full, the City Planner will notify the Petitioner of an incomplete application.
- 6. Presentation to Planning Commission.** Upon verification of a completed Petition for Vacation, and following review and comment from the Director of Public Works and Transportation and the City Attorney, the City Planner shall schedule publication of notice and set the Petition for Vacation for hearing and public comment before the Planning Commission.
- 7. Notice of Hearing.** After setting the Petition for Vacation for hearing and public comment before the Planning Commission, the City Planner will notify the Petitioner of the time and

date of such hearing. The Petitioner must then notify the following persons or entities of such hearing no less than fifteen (15) days prior to the hearing:

- owners of record who have a legal interest in property abutting the property that is subject to vacation or within 185 feet of the property that is subject to vacation;
- individuals residing on property abutting the property that is subject to vacation;
- all other individuals or classes of individuals who may reasonably use the property that is subject to vacation as such individuals or classes of individuals are identified by the City Planner.

The notice of hearing must clearly state the purpose of the hearing, the time, date, and location of the hearing, and a clear statement that the recipient will have an opportunity to be heard.

Upon request of the City Planner or the Planning Commission, the petitioner shall provide proof of mailing of notices of the hearing.

The City Planner, or his or her designee, may provide the notices required herein on behalf of the Petitioner; however, the Petitioner maintains all responsibility for verification of the accuracy and completeness of such notices as provided by the City Planner or his or her designee.

8. **Planning Commission Approval/Denial.** Following hearing and public comment, the Planning Commission will vote to recommend or deny the Petition for Vacation.
9. **Final Approval/Denial.** Upon receipt of the Planning Commission's recommendation or denial of the Petition for Vacation, an Ordinance will be submitted to the City Council. The City Council will then vote to conditionally approve or deny the Petition for Vacation. If the City Council conditionally approves the Petition for Vacation, the vacation will become effective upon the condition that that vacation is properly recorded with the County Recorder of Deeds by the City Clerk. All fees for such recording are in addition to the filing fee and must be paid by the Petitioner to the City Clerk before the City Clerk records the vacation; if such fees are not paid within ten (10) business days of approval by the City Council, the City Clerk will have no duty to record the vacation and the condition of approval may be deemed unsatisfied. In the event the condition is deemed unsatisfied, the vacation will not occur.

STATE OF MISSOURI)
) SS.
COUNTY OF BUCHANAN)

BEFORE THE CITY COUNCIL OF THE CITY OF ST. JOSEPH, MISSOURI

In the matter of the vacation of a portion of (Street Name or Alley or Easement Description), legally described as:

(legal description, if prepared)

VACATION CONSENT FORM

1. The undersigned state(s) that they are / he is / she is the owners of (Insert address of abutting property owners here), property adjacent to (Insert name and/or location of street or easement here), proposed for vacation by this proceeding, as described in the legal description shown above and on the attached drawing.

2. By marking the appropriate line below, the undersigned do / does hereby indicate their / his / her preference in the vacation of (Insert name and/or location of street or easement here), proposed for vacation by this proceeding, as described in the legal description shown above.

_____ DOES Consent to This Proposed Vacation

_____ DOES NOT Consent to This Proposed Vacation

3. By executing this form, the undersigned acknowledges his or her receipt of the attached drawing of the street, alley, or easement that is subject of the Petition for Vacation.

Dated this ____ day of _____, 20__.

Signature

Signature

STATE OF MISSOURI)
) SS.
COUNTY OF BUCHANAN)

On this _____ day of _____, 200 ____, before me personally appeared (Insert name or names of individuals signing this document), to me known to be the person(s) described in and who executed the forgoing instrument, and acknowledged that they / he / she executed the same as their / his / her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

NOTARY PUBLIC

My term expires: _____