

## **RIGHT-OF-WAY OR EASEMENT VACATION POLICIES**

### **INTRODUCTION**

#### **PURPOSE OF POLICIES**

The purpose of these comprehensive, Citywide right-of-way or easement vacation policies are to provide consistency, equity, and predictability in determining what action on each vacation petition would best serve and protect the public interest. These policies provide procedural guidance for the City and for petitioners. These policies also express the City's values related to rights-of-way and easement vacations; the default position is that unless there are compelling reasons to vacate, the City will retain the right-of-way or easement for future public purposes. These Policies apply to all rights-of-way and easements whether improved or unimproved.

#### **DISTINCTION BETWEEN VACATIONS AND ADMINISTRATIVE LAND USE DECISIONS**

There is no right under the land use code to vacate a public right-of-way or easement. In order to do so, a discretionary legislative approval must be obtained from the Board of Aldermen. The Board may not vacate a right-of-way or easement unless it determines that to do so is in the public interest. Part of that determination is to assure that potential development and use of the vacated right-of-way or easement would serve the public interest in a significant way. This determination may be guided by established land use policies and standards as called for by these Street Vacation Policies, but the Board is not bound by land use policies and codes in making street vacation decisions and may condition or deny vacations as necessary to protect the public interest. The City will generally not support vacations that do not advance City planning goals, particularly if inconsistent with the desired intensity of development and preferred uses.

The Board of Aldermen has delegated land use decisions to the City's Planning and Zoning Commission. The Board's role in such administrative land use decisions is to set policies in the form of zoning and land use codes, development standards and Policies. Property owners have the right to develop their property within those established standards, policies, and regulations. Right-of-way and easement vacation decisions are Board of Aldermen decisions as provided by State statute and may not be further delegated.

The term "street" in the context of these policies is used in its broad sense of "dedicated right-of-way." It includes improved and unimproved streets, boulevards, alleys, pedestrian pathways, bikeways, and other public rights-of-way. Although these types of right-of-way serve different transportation and travel functions, all are open to public use.

#### **SUMMARY OF STREET VACATION POLICIES**

In order for a petition for the vacation of public right-of-way to be approved, the Board of Aldermen must determine that to do so would significantly serve the public interest. The City of St. Clair's Planning and Zoning Commission administers the review process and analyzes the impacts of a proposed vacation and the consistency of the proposal with the right-of-way or easement vacation policies and other adopted policies and goals.

During the review process of the vacation petition the Planning and Zoning Commission shall complete a Findings of Fact Checklist for right of way or easement vacation form and will make a recommendation to the Board of Aldermen, including conditions to address the impacts of the proposed vacation and to ensure the provision of the required public benefit. This recommendation may include comments from other reviewing City staff or professional services and may include a recommendation whether to grant or deny the vacation. In making this determination, the Planning and Zoning Commission, City and professional staff and Board of Aldermen will weigh three components of the public interest described as follows:

**I. Public Trust Functions:**

First, the City will consider the impact of the proposed vacation upon the circulation, access, utilities, light, air, open space, and views provided by the right-of-way. These are defined by the policies as the public trust function of the right-of-way and are given primary importance in evaluating vacation proposals. These policies may require mitigation of any adverse effects proposed by the vacation. What constitutes adequate mitigation will be determined ultimately by the Board of Aldermen.

**II. Land Use Impacts:**

Secondly, the City will consider the land use impacts of the proposed vacation. Potential development involving the vacated right-of-way must be consistent with city land use policies for the area in which the right-of-way is located.

**III. Public Benefit:**

Finally, benefits to the public from the vacation of the right-of-way will be considered. The proposal must provide a long-term benefit for the general public.

**COSTS AND FEES**

The costs and fees associated with a vacation include a nonrefundable petition filling fee of (\$150.00) and the actual public hearing advertisement cost in effect at the time. Fees may be amended from time to time by ordinance adoption. Additional fees may be assessed to the applicant if the City requests professional services in order to make determinations.

The petitioner shall provide and is responsible for all costs associated with surveys, drawings, plans, plots, plats, maps, legal descriptions, traffic analysis, and any legal,

professional or other representation. The Petitioner is also responsible for preparing and providing information necessary to respond to City questions or concerns. Additional costs may include required mitigation measures and any costs associated with the provision of the public benefit.

## **FRAMEWORK POLICY — PUBLIC INTEREST**

Vacation requests may be approved only when they are clearly in the public interest. Rights-of-way will be retained unless it can be shown that they are not required for a current or foreseeable public use.

### **A. Components of Public Interest**

The public interest with respect to right-of-way or easement vacations have three major components, all of which must be present for any vacation, partial or complete, to occur. These components are:

1. Protection of the public trust: defined as providing for circulation, access, utilities, light, air, open space and views;
2. Protection from adverse land use effects: defined as assuring that the project developed is consistent with City policies.
3. Provision of public benefit: defined as providing a long-term benefit for the general public; and

### **B. Determination of Public Interest**

The Board of Aldermen will weigh the public trust and land use effects of a vacation, mitigating measures, and the public benefit provided by the vacation to determine whether or not the vacation is in the public interest. In balancing these elements of the public interest, the Board will place primary importance upon protecting the public trust it holds in public right-of-way.

Rights-of-way are dedicated in perpetuity for use by the residents of the City of St. Clair and others for purposes of public travel and transportation of goods. The dedication carries with it certain public rights to circulation, access, utilities, light, air, open space, and view. City government acts as the public's trustee in administering streets and alleys. In that endeavor the primary concern of the City in vacation decisions is to safeguard the public's present and future needs and to act in the public's best interest.

## **PUBLIC TRUST POLICIES**

### **I. Public Trust Functions**

## **CIRCULATION AND ACCESS**

Vacations may be approved only if they do not result in negative effects on both the current and future needs for the City's vehicular, bicycle, or pedestrian circulation systems or on access to private property, unless the negative effects can be mitigated as determined by the Board of Aldermen.

### **Protection of Circulation and Access According to Street Classification.**

- **Arterials and Collectors.**

Right-of-ways designated as Arterials may be vacated only when an alternative circulation route is substituted.

- **Minor Streets: Residential and Commercial.**

Petitions for the vacation of right-of-ways designated as Minor Streets may be approved only if:

- Access is retained to properties on the block where the right-of-way is located;
- Circulation to properties on neighboring streets is retained;
- The right-of-way does not provide a necessary link in the continuity of a route to arterials;
- Public parking provided by the right-of-way is not needed, can be provided on nearby rights-of-way, or can be replaced.

Vacations that would result in diverting truck or commercial traffic to nearby residential streets will not be approved. Designated or determined major truck streets may be vacated only when an alternative route is substituted.

### **Proposed alley vacations will be considered according to the following guidelines.**

The primary purpose of alleys is to provide access to individual properties for loading functions and to provide utility corridors and access to off-street public services such as water, sewer, solid waste and electricity. In addition, alleys may provide other public purposes and benefits including pedestrian and bicycle connections, and commercial and public uses. Alleys should be retained for their primary purposes and other public purposes and benefits. Alley vacations may be approved only when they would not interrupt an established pattern in a vicinity, such as continuity of an alley through a number of blocks or a grid, which is a consistent feature of neighborhood scale. The impacts on

future service provision to adjacent properties if utilities are to be displaced shall be reviewed!

#### **A. Residential Zones.**

In general, alleys in residential zones will be preserved. Alley vacations may be permitted only when:

- a) steep topography prevents development and use of an unimproved alley for access; or
- b) the alley is not needed for service functions; and
- c) off-street parking access which meets current code requirements can be provided elsewhere.

#### **B. Commercial Zones.**

In general, alleys in commercial zones will be preserved. Such alleys may be considered for vacation only when:

- a) their loading, service, delivery, and access to parking functions are retained on the petitioner's property;

#### **C. Downtown.**

The following criteria will be considered for specific downtown alley vacation petitions:

- a) may be vacated only when their loading, service and access functions can be continued within the development site;
- b) alleys which are part of the primary pedestrian circulation system, may be vacated only when comparable public pedestrian circulation is provided and the pedestrian environment along the corridor is improved;

#### **D. Unimproved Streets and Alleys.**

Existing and potential uses for unimproved rights-of-way will be identified during the review process. These uses include development of vehicular circulation and access, pedestrian uses such as pedestrian access to schools, public facilities, shorelines, open space uses, bicycle use and access to public spaces or parks or adjacent streets. All or a portion of the right-of-way may be retained for these or other purposes.

### **Guidelines**

#### **Guideline 1.1 Traffic Code Compliance/Emergency Services**

Proposed vacations, which would encourage violation of the traffic code or would impede emergency services, it shall not be approved. An example is a vacation eliminating one exit to an alley, requiring vehicles to back from the alley on to a street.

### **Guideline 1.2 Cumulative Effects to be Assessed**

When several vacations are proposed for a particular area of the City, a comprehensive review will be undertaken to determine the cumulative effects of the vacations on circulation and access.

### **Guideline 1.3 Necessary On-Street Parking Must Be Replaced**

Streets which provide necessary on-street parking may be vacated only when, public parking can be otherwise provided.

### **Guideline 1.4 Circulation/Access Conditions on Vacations**

The Board of Aldermen may impose conditions on vacations to mitigate negative effects of the vacation on vehicular, pedestrian, and bicycle travel.

### **Guideline 1.5 Vehicular and Pedestrian Access by Agreements with Property Owners**

#### **A. Vehicular Access**

Vehicular traffic functions will not be provided by agreement across private property! When the traffic functions of a street are necessary to the operation of the circulation system, the street will be retained as a dedicated right-of-way.

#### **B. Pedestrian Access**

Pedestrian circulation functions may be provided by an agreement which provides for public access across private property only when a major public benefit is provided by such an arrangement.

## **UTILITIES POLICY**

Rights-of-way which contain or are needed for future utility lines or facilities may be vacated only when the utility can be adequately protected with an easement, relocation, fee ownership or similar agreement satisfactory to the utility owner.

Public rights-of-ways provide utility corridors for the efficient transportation and delivery of utility services to the public in the least costly manner possible. Utilities generally assess vacation petitions from an operational perspective in order to ensure that a vacation will not impair current service reliability and capacity levels nor limit the ability to expand services in the future. The growth of telecom utilities above and below ground, increased urban densities, and demand for undergrounding of utility

facilities all place pressure on the value of public rights-of-way, particularly alleys, for future utility needs.

## **Guideline 2.0 Review of Petitions by Affected Utilities**

Utility companies with agreements to operate within City right-of-ways shall be given an opportunity to review the proposed vacation, to identify its existing and future interests in the right-of-way, and to indicate what actions would be necessary to protect its interests. The Petitioner is responsible for working with the various utility companies to identify and address any utility related issues. The Petitioner bears the costs of addressing any utility related issues, relating to the vacation and shall ensure that utilities remains undisturbed as to prior to the vacation without any detriment to current or future utility services. Enhancement of utility services at the Petitioner's expense shall not be required.

### **Guideline 2.1 Utility Conditions on Vacations**

The Board of Aldermen may impose conditions on vacations to assure continued service to the public in the most efficient, least costly manner possible.

### **Guideline 2.2 Utility Easement Provisions/Property Owners Risk and Responsibility**

Easement agreements should clearly state the rights and responsibilities of each party.

Utilities may prohibit construction of buildings, structures, grading and filling, and other uses over or under their easements where such activities would inhibit operation of or prevent access to the utility facilities for maintenance and repair, or would cause extra cost or liability to the utility, or would affect the safety and integrity of those facilities.

Any property owner which makes any kind of improvements within said utility easement shall bear full liability for any damages directly or indirectly, physically or implied to any utilities due to the placement of said improvements or operations thereof.

### **Guideline 2.3 City Utility Easement Retention/ Vacation Without Agreement**

Unless otherwise specified in the Vacated Right-of-Way Ordinance, there shall be reserved to the City after vacation an easement over the vacated area for drainage and for passage of public utilities such as electricity, telephone, water, sewer, gas and the like, together with the right of entry thereon for repairs, construction and reconstruction of the drainage facilities and the utilities mentioned, without any liability for damages on the part of the City. Where any such easement is reserved, no construction, temporary or permanent, shall be made over or across the vacated street area without the approval of the Board of Aldermen by adoption of a resolution. The Board of Aldermen may relinquish by ordinance the City's easement rights in any vacated street.

## **Guideline 2.4 Relinquishment of public utility easements.**

- A. The planning and zoning commission may recommend the relinquishment of a public utility easement upon determining the following:
- (1) No one has objected to the relinquishment of the easement.
  - (2) The appropriate agency (public works in the case of sewer and water easements) (utility companies in the case of electric, gas and telecommunication easements) has filed in writing a statement that the easement is no longer needed to provide utility service now or within the foreseeable future and that they hereby agree to relinquish all rights to said easement. Said written statement shall at a minimum be provided on Company letterhead, shall state their name, their professional classification and their contact information (phone and fax number, email and post office address).
  - (3) The retention of the easement no longer serves any useful public purpose.
- B. Upon the planning and zoning commission determining that the conditions set forth in section (a) have been satisfied, the commission may recommend that the Board of Aldermen adopt an ordinance authorizing the mayor of the city to quitclaim the city's interest in the public utility easement. Such quitclaim deed shall be filed in the Franklin County Recorder of Deeds land records. If the conditions set forth in section (a) are not satisfied, the planning and zoning commission shall submit a recommendation to deny such relinquishments.

## **LIGHT, AIR, OPEN SPACE, AND VIEW POLICY**

When the Board of Aldermen determines that the light, air, open space or view provided by a particular street or alley should be retained, the right-of-way may be vacated only if the public open space, light, air and view can be retained or substituted by dedication to the public of other comparable street right-of-way or other property such as open space property or on future development on the vacated and abutting property.

The light, air open space, and view opportunities provided by rights-of-way are important resources that contribute to the quality of life within the City of St. Clair and become more valuable as the City becomes more densely developed. The contribution of this important street function to the existing and future quality of life for residents will be an important consideration in each proposed vacation.

### **Guideline 3.0 Impacts on Light, Air, Open Space, and View to be Analyzed**

The light, air, open space and view functions provided by the right-of-way will be identified for each proposed vacation and the effects of their loss analyzed. The analysis will include the potential shadow impacts, of the increase in development potential directly attributable to the vacation, on nearby public parks and open spaces. Any potential impacts of vacation on light, air, open space or view will be



compared with similar impacts that would result from development without the vacation. Means of retaining these functions may be considered.

### **Guideline 3.1 Comprehensive Plan Policies to be Followed**

Proposed vacations may be approved only when they are consistent with the City's Comprehensive Plan. Particular consideration will be given to whether the project supports the desired density and preferred uses identified in the Comprehensive Plan.

### **Guideline 3.2 Light, Air, Open Space, and View Conditions on Vacations**

The Board of Aldermen may impose conditions on vacations to mitigate any potential negative effects of the vacation on the light, air, open space, or view functions of the right-of-way.

### **Guideline 3.3 Partial Vacations**

Vacation of the undeveloped portion of the street right-of-way shall generally be discouraged to:

1. Retain the existing pattern of extra setbacks and open space in residential neighborhoods.
2. Provide opportunity for pedestrian and bicycle amenities in neighborhood commercial areas.
3. Provide areas of natural scenery along designated protected view rights-of-way.
4. Provide a buffer between land uses and zoning districts.
5. Provide continuity of wildlife habitat corridors.

### **Guideline 3.4 Protection of Environmentally Critical Areas**

Rights-of-way in slide prone areas, wetlands, flood plains or other critical areas shall generally be retained to reduce development intensity in environmentally critical areas and to protect public health, safety, and welfare.

## **II. Land Use Impacts:**

### **LAND USE POLICY**

A proposed vacation may be approved only when the increase in development potential that is attributable to the vacation would be consistent with the land use policies adopted by the Board of Aldermen. The criteria considered for making individual vacation decisions will vary with the land use policies and regulations for the area in which the right-of-way is located. The Board of Aldermen may place conditions on a vacation to mitigate negative land use effects.

Vacations can affect the land use and development patterns in an area by adding to the developable land base, altering the local pattern of land division, and increasing the development potential on the vacated and abutting properties. These changes

may allow development that is inconsistent with adopted land use polices and have a negative effect on the area of the proposed vacation and other rights-of-way. The Petitioner shall provide the City with information about the expected completed density of the project and the development potential of the property without a vacation. Such information should be provided as both the percentage increase in the development potential and the additional square footage added to the project. The Petitioner shall also provide the City with information as to how the project advances City planning goals and meets the zoning criteria in the area where the project is located. It is the obligation of the Petitioner to provide a justification for the vacation and to provide information on whether there are feasible alternatives that do not require a vacation.

#### **Guideline 4.0 Land Use Considerations**

To determine whether the land use effects of vacation are in the public interest, the following factors will be considered:

- A. The long and short-term effects of the changes in development potential directly attributable to the vacation on the circulation, access, utility, light, air, open space and view functions of nearby streets and nearby public places;
- B. Consistency of land use changes with the City's Comprehensive Plan, particularly in the land use, transportation and neighborhood elements of the plan;
- C. In commercial and residential zones, the compatibility of the size, scale and character of potential development with the size, scale and character of both existing, development in the area and development provided for by the zoning codes, given typical lot sizes and configurations; and
- D. The post-vacation lot size and configuration compared with surrounding properties and with the local pattern of land division and organization. In areas where street rights-of-way provide a strong edge or boundary between zones or areas of different scale and character, the right-of-way may be vacated only when a suitable alternative can be achieved with the proposed vacation. Vacations which would result in intrusions of residential development into commercial and industrial zones or the converse will be discouraged.

#### **Guideline 4.1 Land Use Conditions on Vacations**

The City may place conditions on vacations to guard against the negative land use effects of additional development potential attributable to the vacation and to make sure that policy objectives are met.

- A. Such conditions will be related to the identified negative effects attributable to the vacation. For example, they may limit additional height or density to pre-vacation levels when these increases are not in the public interest. The conditions will ensure that post-vacation development is consistent with the city's land use policies and otherwise in the public interest.

- B. Land use conditions will be stated in terms of development parameters, such as floor area maximums or building envelopes which may not be surpassed, and will generally run with the land.
- C. Approval of a street or alley vacation shall not imply City approval of the development project for the site and shall not relieve the petitioner of the requirement to obtain all necessary land use and building permits prior to development of the site.

#### **Guideline 4.2 Timing of Vacations (Administrative Land Use Decisions)**

Any investment made in a project prior to vacation is solely at the Petitioner's discretion and risk. The Petitioner must not assume that the right-of-way is available for development until the Board of Aldermen has approved the vacation.

#### **Guideline 4.3 Zone Specific Review (Adopted City Land Use Policies to be Used)**

In addition to the general street vacation policies and guidelines contained in this document, the adopted City land use policies for the zone in which a vacation is located will be used to determine whether or not the land use effects of each vacation are in the public interest. These include policies such as the Comprehensive Plan, particularly its land use, transportation and neighborhood elements. Vacations will be reviewed according to Land Use Policies as now constituted or hereafter amended.

#### **Area Specific Guidelines**

Guidelines related to various land use areas are stated below. They are provided in order to highlight special concerns related to each area. They shall be used to supplement the general provisions and guidelines of the City of St. Clair Vacation Policies and other land use policies for protection of the public interest.

##### **A. Downtown**

Petitions for vacations of right-of-way in the downtown area shall be reviewed according to the Comprehensive Plan, particularly its land use and transportation elements of the plan and other relevant adopted plans or goals.

##### **B. Single-family Areas**

Rights-of-way in single-family areas shall generally be retained as these areas may be needed in the future to provide for public uses, such as utility corridors, that cannot be currently identified or anticipated. Rights-of-way in single-family areas provide a number of public benefits such as providing for consistency in the pattern and scale of development and providing important breathing space in a neighborhood. Petitions for vacations in single-family areas shall be reviewed by the same criteria as applied to other vacation petitions, including

the requirement that the vacation provide a long-term benefit to the general public.

Cluster housing and other planned housing developments or innovative housing initiatives proposed in Single Family zoned areas shall be evaluated by the criteria established for the review of Multi-family areas. Alley vacations associated with existing institutions in single family areas, will be reviewed for compatibility with the surrounding neighborhood.

### **C. Multi-family Areas**

Petitions for the vacation of right-of-way in multi-family areas shall be reviewed according to the provisions of the Comprehensive Plan, particularly its land use, transportation and neighborhood elements or other relevant policies.

In addition, petitions will be reviewed for potential impact upon neighborhood traffic volumes and noise.

### **D. Commercial Areas**

In general, streets and alleys in commercial areas will be preserved in order to aid in the movement of goods and people, unless it can be demonstrated that the vacation meets another important public purpose without jeopardizing the functioning of the commercial area and its compatibility with surrounding areas. Such petitions shall be reviewed according to the provisions of the Comprehensive Plan, particularly its land use, and transportation elements.

Access to off-street loading and parking areas and the continuity of street fronts, particularly in areas with pedestrian activity, shall be preserved.

### **E. Industrial Areas**

Petitions for vacations of right-of-way in industrial areas will be reviewed according to the Comprehensive Plan and any other relevant adopted plans or goals for industrial areas.

## **III. Public Benefit:**

### **PUBLIC BENEFIT POLICY**

A vacation petition shall include a public benefit proposal. The concept of providing a public benefit is derived from the nature of street right-of-way. Right-of-way is dedicated for use by the general public in perpetuity whether or not a public purpose can be currently identified. The City acts as a trustee for the public in its administration of rights-of-way. Case law requires that in each vacation there must be an element of public use or benefit, and a vacation cannot be granted solely for a private use or benefit. Therefore, before this public asset can be vacated to a private party, there must be a benefit that accrues to the general public.

Rights-of-way, whether improved or unimproved, provide important benefits to the general public. Among the various benefits are the preservation of the street grid that provides for consistency in the development pattern and influences the scale and orientation of buildings. Rights-of-way provide for breathing space, open space and views, natural drainage, and wildlife corridors. These benefits are in addition to the public functions provided by rights-of-way discussed in earlier sections of these Policies, including the movement of people and goods whether in vehicles, on foot or by bicycle; providing for current and future utility services; and street trees and other amenities.

Proposed vacations may be approved only when they provide a long-term public benefit. Vacations will not be approved to achieve short-term public benefits or for the sole benefit of individuals. The following do not constitute a public benefit:

- Mitigation of the adverse effects of a vacation.
- Meeting code requirements for development.
- Paying the required vacation fee.
- Facilitating economic activity.
- Providing a public, governmental or educational service; while the nature of the project is a factor in determining the adequacy of a public benefit proposal, it does not in and of itself constitute an adequate public benefit.

The Petitioner's public benefit proposal should recognize the loss of the benefits provided by the right-of-way to the public and the gains achieved by the vacation to the petitioner. The public benefit should balance what the public loses through the vacation with what the public will gain from the project. The comparison is intended to be an element of the evaluation of the adequacy of a public benefit proposal. The public benefit should not merely be compensatory and should clearly provide a benefit to the general public.

The proposal to provide a public benefit does not entitle a Petitioner to a vacation; the decision whether to grant a vacation is based on a review of all the elements identified in these Policies. It is the obligation of the Petitioner to demonstrate that the public benefit proposed be proportional to the benefits gained by the Petitioner and to the scale and impacts of the project. The Petitioner shall provide information regarding the increase in the development potential from the vacation. A significant public benefit must be provided by major projects, that is those that are large in scale, require a large amount of public right-of-way, have identified impacts or those where the vacation contributes to a significant increase in the scale of the project. Minor projects are only required to provide a more moderate public benefit.

As part of the petition process, the Petitioner shall provide information to the City regarding the public benefit proposal. The City may assist the Petitioner in refining and developing the public benefit proposal. The Board of Aldermen shall make the final determination as to whether the public benefit is acceptable to the City. A number of factors will be considered, including:

- Zoning designation, i.e. commercial, industrial, residential;
- Street classification, i.e. arterial, collector, minor or alley;
- Size of project, in square feet;

- Size of area to be vacated, in square feet; and
- Contribution of vacated area to the development potential of the site: percentage increase of the project and additional square feet.

The City will also consider:

- Compliance of the project with City policies and goals, including the Comprehensive Plan, neighborhood planning goals, and economic development goals;
- Provision of affordable or special need housing or other human services;
- Public nature of the project (library, governmental purposes, low-income housing);
- Neighborhood support or opposition;
- Broad-based community support or opposition;
- Protection of designated landmarks and other historic/community resources; and
- Protection of environmentally sensitive lands.

## **Guideline 5.0      Public Benefits Identified**

Public benefits may include, but are not limited to:

**A. On-site Public Benefits:** on-site benefits are favored as the provision of the public benefit can also act to offset any increase in scale from the development. On-site public benefits may include:

- Publicly accessible plazas or other green spaces, including public stairways;
- Streetscape enhancements beyond that required by codes such as widened sidewalks, additional street trees or landscaping, street furniture, pedestrian lighting, wayfinding, art, or fountains;
- Pedestrian or bicycle trails;
- Enhancement of the pedestrian or bicycle environment;
- View easement or corridors; or
- Preservation of landmark buildings or other community resources.

**B. Off-site Public Benefits:** where it is not practical to provide the public benefit or more than a portion of the public benefit on the development site, the public benefit may be provided off-site. This may include:

- Pedestrian or bicycle trails or public stairways;
- Enhancement of the pedestrian or bicycle environment;
- Enhancement of existing public open space such as providing playground equipment in a City park;
- Improvements to designated Streets;
- Providing wayfinding signage;

**C. Real Property May Be Conveyed:** in certain circumstances the City may accept real property as a public benefit. The property proposed to be conveyed must be property that the City is willing to accept. The Petitioner is responsible for any costs associated with the conveyance including appraisals, title work,

environmental site assessment, deeds or other document production, taxes on the transaction, or other expenses related to the conveyance of real property, including environmental remediation.

- D. Payment of Funds:** in certain circumstances where it is not practicable to provide or develop public benefits such as those listed above, the City may accept the payment of in-lieu funds dedicated for a specific purpose consistent with these policies as a public benefit. Such payment must be determined to be an acceptable alternative by the City. Such payment to meet public benefit obligations does not substitute for the payment of the required street vacation fee.

#### **Guideline 5.1 Vacation for Security Purposes**

Street and other rights-of-way are dedicated for general public use and enjoyment. Vacations which solely result in the private regulation of access to public property shall not be granted unless the vacation provides a clearly identifiable public benefit. Vacations are not considered a solution to security problems and shall not normally be approved, absent extraordinary circumstances.

#### **MISCELLANEOUS POLICIES**

##### **Publication of Notice.**

- A.** Upon receipt of a petition to vacate any street, alley or way, the City Clerk shall cause the following notice to be published one (1) time in the official newspaper of the City;

##### **Notice**

Notice is hereby given that on the \_\_\_\_ day of \_\_\_\_, 20\_\_, at a duly convened meeting of the Board of Aldermen of the City of St. Clair, Missouri, an ordinance providing for the vacating of the following streets, alleys, or ways, to wit;

(Description)

Will be considered for enactment by the Board of Aldermen, at said meeting, all persons interested may file written objection or appear before the Board to hear any such objections.

- B.** The notice provided for in this section shall be published a minimum of fifteen (15) days prior to said public hearing.
- C.** The Administrative Officer or their appointed representative shall post a sign within the petitioned right-of-way fifteen (15) days prior to the scheduled Public Hearing which states "This right-of-way or portions thereof has been petitioned to be vacated! A Public Hearing will be held regarding this matter at St. Clair City Hall on (Month, Day, Year) at (Time)."

## **BOARD OF ALDERMEN INITIATION OF STREET VACATION PETITIONS POLICY**

The Board of Aldermen may initiate the street vacation process by resolutions referred to the Planning and Zoning Commission for their consideration. Board of Aldermen final approval of said resolution should not be granted until a recommendation has been obtained by the Planning and Zoning Commission.

### **Objections – Action of Board**

- A. Upon filing a written objection to the vacation of a street, alley or way pursuant to this Article, or a personal appearance at the meeting at which the vacation ordinance is considered in objection thereto, the Board of Aldermen shall request the petitioners to furnish written consent to such vacation, signed and acknowledged by two-thirds (2/3) of the owners of the property abutting and adjoining the streets, alleys or ways to be vacated.
- B. Upon such consent being filed, the Board of Aldermen may in its discretion enact or refuse to enact the vacation ordinance. If no written objection are filled, enactment of said ordinance shall be entirely dependent upon the discretionary power of the Board, and no consent shall be necessary, provided the petitioners constitute two-thirds (2/3) of the owners of the abutting and adjoin property.

Any person aggrieved by a decision of the Board of Aldermen shall appeal to the county circuit court within 30 days after a decision is rendered by the Board of Aldermen in accordance with the procedures set forth in RSMo ch. 536.

### **Ownership of vacated property**

That part of any right-of-way, street, or alley vacated shall vest in the adjoining person(s) who have title thereto according to law. Whenever any public square or common shall be vacated, the property shall be disposed of as the Board of Aldermen may direct.

### **Initiation of vacation proceedings by director of public works or city staff.**

The director of public works or city staff may petition to vacate a right-of-way, street, alley or easement when the director is of the opinion that the right-of-way, street, alley or easement either has not been opened or has not been used. Notwithstanding any other provision of this article to the contrary.

If, the planning and zoning commission finds that:

- (1) The right-of-way has not been opened or has not been used;
- (2) There are no utilities, public or private, on the right-of-way or easement;



- (3) All property owners have access to another right-of-way, street, or alley;
- (4) Retention of the right-of-way, street, alley or easement serves no useful public purpose;
- (5) The right-of-way, street or alley has not been opened and contains public or private utilities that will be protected by adequate easements;

The planning and zoning commission may thereafter recommend that the Board of Aldermen allow the right-of-way, street, alley or easement to be vacated.

#### **Right-of-Way Vacation Plat Submittal requirement**

The Petitioner(s) shall contract with a registered land surveyor to have prepared a Right-of-Way Vacation Plat in accordance to Appendix B – The Land Subdivision and Mobile Home Park Regulations of St. Clair, Missouri Section 6. – Final plat and accompanying documents. In addition to the stated requirements the Right-of-Way Vacation Plat shall indicate the names and addresses of all adjoining property owners abutting the right-of-way and the portion of the right-of-way to be vacated by way of alternating hashed lines towards each adjoining property indicating the right-of-way is divided into equal proportions and a full legal description of the property to be vacated. The title of the Final Plat shall state “The Right-of-Way Vacation of (describe the portion of the right-of-way to be vacated)” Within the City of St. Clair, Missouri.

If the any adjoining property owner has agreed to sell or relinquish vacated property to the petitioner or any other adjoining property owner, a Minor Subdivision shall be completed in accordance to City ordinances and a separate Final Plat prepared and submitted for consideration. The Board of Aldermen may approve said Final Plat only after approval of the Right-of-Way Vacation Plat and upon conformation from City staff that said Right-of-Way Vacation Plat, a copy of the ordinance approving such plat and any other County required documentation has been submitted to the County Commissioner’s office for processing. If said vacate documentation has not been submitted to the County Commissioner’s office, the requested Minor Subdivision Final Plat shall not be approved.

Vacation request by the City of St. Clair or the Director of Public Works are exempt from the Right-of-Way Plat submittal requirements.

#### **Approval Recommendations and Petition Expirations Thereof**

Recommendations for approval of right-of-way vacations by the Planning and Zoning Commission shall expire ninety (90) days from the date of approval unless extenuating circumstances exist in which the Board of Aldermen cannot convene to resolve the petition. If the petition is not resolved at the next scheduled Board of Aldermen meeting in which a public hearing has legally been held, a quorum has been reached and the meeting officially convened, then said Planning and Zoning Commission recommendation shall become null and void and all filing fees forfeited. A new petition

shall be submitted to the Planning and Zoning Commission for re-consideration along with all required documentation and filing fees. The Board of Aldermen may waive the requirement for a new petition, documentation and filing fees if the Board of Aldermen determines the vacation is in the City's best interests and the Board wishes to proceed with said vacation. If the Board of Aldermen determines to waive said resubmittal requirement, an additional legal Public Hearing shall be held prior to the Board of Aldermen's final determination. In no case shall any vacation petition be considered for approval that is one hundred and eighty (180) days from the date of filing.

**Land Under Development - conditions and exemptions**

This policy shall not apply to a developer who has obtained approval for a major subdivision within 3 years of FINAL plat approval for the subdivision.