

Vacation of City Right-of-Way: A Brief Primer

Office of Financial Services – Real Estate

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What does “vacation of city right-of-way” mean?

Vacation is a term that means to release, terminate or extinguish city right-of-way (ROW) easement rights. It can also generally refer to the release of public utility easement rights (e.g., storm sewer, sanitary sewer, water) and private utility easement rights (gas, electric, communications). The vacation process is authorized by and specified in city ordinance.

What exactly is “city ROW?”

City ROW is property in the city that is dedicated to public use for transportation purposes such as highways, streets, alleys and pedestrian trails. ROW generally includes improvements and facilities such as streets, curbs, gutters, underground sewers, water mains, gas lines, overhead power or communication lines, sidewalks, boulevards, street lighting, public trees, pedestrian bike lanes, trails, and pathways. ROW easement rights are most often established by plat, but sometimes by conveyance of deeds or easement documents. ROW rights are most often easements within land that is owned in “fee” by another party. Most “underlying fee owners” of ROW are the owners of property abutting the ROW.

Why does city right-of-way sometimes need to be vacated?

Most city ROW was platted many years ago, even as early as the mid-1800s. What were intended to be opened, functioning public streets or alleys were mostly improved as such, but some ROW was never improved and remained a street or alley on paper only. Occasionally, owners of property that abuts platted, unopened ROW – or ROW that was opened, improved and used by the public but later became abandoned – want to construct buildings or other improvements within the ROW, but they cannot do so until it is vacated and the utility easements within the ROW are also released.

What does the city’s vacation ordinance do?

It establishes the process for vacating ROW rights. It specifies who can petition for a vacation, what information is needed to process a vacation, and how city departments and utilities should weigh in on the vacation request. It also provides for approval of the vacation via resolution before the City Council at a public hearing. And it lays out after-approval steps and options for rescinding the vacation if petitioners do not comply with the terms and conditions of the vacation.

Why is there a need to amend the vacation ordinance?

- 1) The current text is unclear, repetitive and antiquated, and needs to be updated to improve clarity and understandability.
- 2) Real Estate often delays timely processing of vacation petitions because utility companies do not always provide timely feedback on whether to retain or release their easement rights. The key ordinance amendment helps keep the process moving by allowing the City to release all utility easement rights unless: a utility says they want to retain those rights; city staff determine the utility has a facility (e.g., power line, gas pipe, sewer or water pipe) within the ROW; or the utility is a city franchisee. This more efficient process benefits property owners and developers who want a vacation completed as quickly as possible.