



**ALESHIRE &
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ATTORNEYS AT LAW

MEMORANDUM

TO: Clients

FROM: Fred Galante, City Attorney

DATE: November 7, 2014

RE: Procedure to Vacate Portions of City Streets

Street vacations may be accomplished through either a summary or a non-summary process. The summary procedure is a shorter process that applies when certain criteria are met. Otherwise, the general vacation process will be required. If it is unclear which process is necessary, public agencies often concurrently proceed with both the summary and non-summary processes to ensure that all bases have been covered.

Summary Vacation

The City may use a summary proceeding to vacate a portion of a street only when there are no in-place public utility facilities in use which would be affected by the vacation and the vacation is pursuant to a circumstance described by statute. Possibly applicable here, a summary proceeding is appropriate when an excess right-of-way is not required for street purposes. To summarily vacate a street, the City Council need only adopt and record a resolution vacating the street. There are no notice or hearing requirements.

The question with respect to the transaction at issue is whether the area to be vacated is truly "surplus," as is necessary for this to properly qualify for a summary vacation. First, staff should ascertain whether or not there are existing public utility facilities which would be affected by the vacation of this area. If there are no utility problems but there is a good argument that the land at issue is not actually surplus, we would recommend that the City pursue a non-summary vacation. If timing is not an issue, there would not be a reason for the City to pursue concurrent alternative paths.

Non-Summary Vacation

Before vacating a street, the City Council must submit the matter of the proposed vacation to the Planning Commission. Within 40 days, or a shorter period designated by the City Council, the Planning Commission must make a report to the City Council stating whether or not the proposed vacation is in conformity with the general plan. If the proposed vacation does conform to the general plan, the City Council may set a hearing on the proposed vacation at least

fifteen days after the initiation of the proceedings.¹ Notice of the hearing must be published and posted.² At the hearing, the City Council will hear evidence presented by all interested persons.

If, at the conclusion of the hearing, the City Council determines that the vacation area is unnecessary for present or prospective public use, the City Council may adopt a resolution vacating the easement. The resolution may be contingent upon conditions imposed by the City Council. The resolution of vacation must then be recorded with the office of the county recorder. Once the resolution has been recorded (and any conditions have been complied with) the vacation is complete.

Utilities

Should staff's investigation reveal utilities within the area at issue, the City Council must expressly reserve said utility easements and the right, at any time, to construct, maintain, operate and replace the utilities, from the interest being vacated.

If you have questions about this process, please let me know.

¹ **Str & H C § 8320.** "(a) The legislative body of a local agency may initiate a proceeding under this chapter in either of the following ways:

(1) On its own initiative, where the clerk of the legislative body shall administratively set a hearing by fixing the date, hour, and place of the hearing and cause the publishing and posting of the notices required by this chapter. . . .

(b) The notices required by this chapter shall contain both of the following:

(1) A description of the street, highway, or public service easement proposed to be vacated and a reference to a map or plan, that shows the portion or area to be vacated and includes a statement that the vacation proceeding is conducted under this chapter. In the case of a street or highway, the description shall include its general location, its lawful or official name or the name by which it is commonly known, and the extent to which it is to be vacated. In the case of a public service easement, the description shall identify it with common certainty. The map or plan showing the location of the street, highway, or public easement proposed to be vacated is sufficient compliance with this paragraph.

(2) The date, hour, and place for hearing all persons interested in the proposed vacation. The date shall not be less than 15 days after the initiation of proceedings."

² **Str & H C § 8322.** (a) Except as provided in subdivisions (b) and (c), notice of the hearing on the proposed vacation shall be published for at least two successive weeks prior to the hearing in a daily, semiweekly, or weekly newspaper published and circulated in the local agency conducting the proceeding and which is selected by the legislative body for that purpose or by the clerk or other officer responsible for the publication where the legislative body has not selected any newspaper for that purpose.