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## **Procedure for Street and/or Alley Right-of-Way Vacation**

### **Authority**

The process to vacate street or alley right-of-way in the City of Sturgis is regulated by SD Codified Laws in Chapter 9-45. Along with the requirements of state law, the City requires specific steps to be followed in order to create a resolution that can be presented to the City Council and to assure the Council that community issues have been address.

### **General Procedure**

- The following is the general process for a typical right-of-way vacation:
- Petitioner creates a petition specific for the right-of-way to be vacated and obtains 100% of adjacent property owner's signatures (signatures must be on the petition).
- Petitioner must notify all utility companies and obtain their written response regarding right-of-way.
- Completed Petition, Plat Application, and a \$250 filing fee along with all relative documents must be turned in to the City Manager's Office.
- Documents are reviewed by City staff and a resolution is prepared.
- Planning and Zoning Commission will review the application and all related documents and will make a recommendation to the Council along with a request to set a Public Hearing if applicable.
- The Notice of Public Hearing and exhibits are published in the newspaper twice prior to the Public Hearing date.
- The Public Hearing for the proposed Vacation is held at the City Council meeting.
- If the Council approves the request, there is a twenty day waiting period - after the date of publication of the Council Minutes - before the resolution takes effect. During this 20 day waiting period, a member of the public could complete the requirements for a petition and ask for a referendum to require a vote of the people.

## General Procedure

The following is the general process for a typical right-of-way vacation:

- Petitioner creates a petition specific for the right-of-way to be vacated and sends notifications to all utility companies. The utility companies must return response notices to the petitioner. These responses must be included in the application. The petitioner must obtain 100% of the adjacent property owner's signatures (see form example).
- Petition, Platt Application, \$250 fee and all relative documents must be turned in to the City Manager's office.
- Documents are reviewed by City staff and a resolution is prepared for Planning Commission review.
- Based on Planning & Zoning review and recommendation, the Council sets a date for a public hearing at a future council meeting.
  - The notice of public hearing and exhibits are published in the newspaper twice prior to the public hearing date.
  - The public hearing for the proposed vacation is held at the Council meeting.
  - Upon approval by the City Council, a twenty day waiting period from the date of the Council Minutes publication begins. After this 20 day waiting period, the plat will be filed and the resolution becomes effective.

## Petition

1. A right-of-way vacation is initiated by a property owner preparing and completing a petition. The petition must be signed by all of the owners of the property abutting the street or alley to be vacated (SDCL 9-45-7). The petition must also be signed by the petitioner who must attest to the facts presented on the petition.
2. The petition must include the following:
  - Legal Description of the right-of-way to be vacated
  - List of all abutting properties
    - Correct legal description of all abutting properties owned by each property owner. (All legal descriptions must be confirmed by county Register of Deeds records for accuracy).
  - Name and address of each property owner
  - Signature of each property owner (**each signature must be notarized**)
  - Oath of petitioner (**must be notarized**). This testament must include the petitioner's name, address and telephone number.
3. A petition example is provided. When preparing the petition, add as many legal and signature areas as necessary for all abutting properties.  
**Note:** All the owners of property abutting the proposed street or alley must be in favor of the vacation and sign the petition. By law, if there is not 100% participation, the street cannot be vacated.

### **Other Required Documentation**

1. Provide a drawing of the proposed right-of-way to be vacated (this can either be in an Exhibit or Plat format, however **a plat is preferred**) the exhibit or plat must be completed by a registered land surveyor or qualified Engineer. If using an exhibit format, the exhibit must show the proposed area to be vacated along with bearings and dimensions of vacation limits. The exhibit must be drawn to City Plat standards as it will become part of the resolution documents when filed at the Register of Deeds office.
2. A drawing or site development plan showing the intended use of the vacated right-of-way if approved by the Council and becomes effective.
3. Written responses from all utility companies affected by the proposed vacation.

### **Right-of-Way Easements Retained**

Under normal circumstances, when the city vacates right-of-way, an easement for public and private utilities is retained over the entire vacated area. If the petitioner desires to have the City relinquish the utility easement, all utilities operating in the city must be contacted to determine their need for the continued use of the right-of-way. If all utilities responses show there is no need to retain the easement, the resolution will state there are no exceptions to the vacation of the right-of-way. If some of the responses show there is a continued need to retain an easement, the petitioner must resolve the conflicting needs with the appropriate utilities or an easement will be maintained in the vacated right-of-way.

The petitioner must get written responses from the utility companies and submit them to the City Community Development office along with the petition. Any costs associated with easement drawings and/or relocation of utilities will be the responsibility of the petitioner and/or utility company. The petitioner must state on the petition to have the City relinquish the easement.

### **Submittal of Petition**

The petitioner must present the petition and all other required documentation to the Office of the City Manager. There is a \$250 payment required to be paid at that time for processing and publication costs.

### **Review Procedure**

Upon receipt of the petition, supporting documentation and application fee, the petition will be reviewed by various City departments. The review process will include:

- Check of petition for inclusion of all abutting property owners.
- Assurance that no property owner is deprived of required and reasonable access.
- Discourage the creation of dead-end streets and alleys that are not consistent with approved design standards.
- Protection and access to all existing or proposed public and private utilities located in the existing right-of-way.
- Assurance that adequate emergency response access is maintained.
- The goals and objectives of the present and future transportation needs for the city are met.

After review of the petition by City, a resolution will be prepared and presented to the Planning Commission and City Council.

### **City Council (Review and Action)**

1. City staff will prepare a resolution for the Planning Commission and City Council to review. The Council will set a public hearing date for the proposed vacation based on State Law requirements.
2. A notice of hearing including an exhibit showing the proposed right-of-way vacation will be published in the City's official newspaper twice 10 days prior to the hearing date.
3. On the hearing date, the City Council will be presented with information regarding the proposed vacation.
  - Planning Commission, with input from other city staff, will present a recommendation to the City Council. That recommendation may be in favor of, in opposition to, or neutral to the proposed vacation.
  - The petitioner must be present at the hearing. The petitioner will address the City Council on the need for the vacation and the results of the neighborhood meetings.
  - Any opposition to the vacation will be heard at this time also.
4. The City Council can accept or reject the vacation at this time or defer it until a later date.

### **Approval of Resolution**

If the Council approves the vacation of the right-of-way, a notice will be published in the City's official newspaper following approval. The resolution is subject to the referendum process as established by state law. The public will be given 20 days after publication of the resolution to file a petition pursuant to law. If a valid petition for referendum is not received within the 20 day period, the vacation will become effective and the resolution will be filed at the Register of Deeds office in the appropriate county.

Important: If the Register of Deeds office rejects the resolution due to an incorrect legal, the petitioner will be notified to obtain the corrected legal and resubmit the petition to the City Community Development office. An additional \$250 application fee will be required with the resubmitted petition.

State law dictates the disposition of vacated right-of-way. The appropriate county Office of Register of Deeds will assign ownership of the vacated right-of-way. The petitioner may wish to enlist the services of a qualified attorney to assist in the determination of property ownership if there are any questions or concerns.

### **Petitioner Responsibility After Approval**

If there is an existing public street within the vacated right-of-way, the petitioner shall immediately close the street to public travel upon the vacation taking effect. This shall be accomplished with the use of approved signs and barricades as prescribed by the City Public Works Director. Depending upon the future development plans for the vacated right-of-way, the street must be permanently closed with barricades or by removal of any improved street. The developer shall develop a plan that will be approved by the City for necessary actions required upon successful completion of the

street vacation process. The plan will stipulate a time period for compliance with various activities needed to permanently vacate the right-of-way.

**Timeline**

The process to vacate a street, alley or other right-of-way can generally be completed in less than 90 days prior to the vacation becoming effective. This time includes preparing a resolution, action by the City Council and a twenty-day referendum period. City Council and Planning & Zoning Commission schedules, neighborhood concerns, State laws or a number of other circumstances, can all affect the actual length of time it takes to complete the process.

*Sample Petition*

*(create your own custom petition using these elements as needed)*

PETITION TO VACATE: (Name of the street within the limits of the vacation)

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TO THE STURGIS CITY COUNCIL:

The owners of real property in The City of Sturgis, SD, petition the Council to vacate the (street or alley) described above, because it has (been used but no longer serves any useful public purpose or not been used for public travel for at least 20 years).

An exhibit of the (street or alley) proposed to be vacated is attached and made a part of this petition.

We request that you have this petition filed, set a hearing date and give notice of the time and place of the hearing as required by law. After the hearing, we request that you vacate the (street or alley) by resolution as provided by law.

1) LEGAL DESCRIPTION \_\_\_\_\_  
(Print full legal description of property here.)

\_\_\_\_\_  
(OWNER—SIGNATURE)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Notary Public—South Dakota

2) LEGAL DESCRIPTION \_\_\_\_\_  
(Print full legal description of property here.)

\_\_\_\_\_  
(OWNER—SIGNATURE)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Notary Public—South Dakota

3) LEGAL DESCRIPTION \_\_\_\_\_  
(Print full legal description of property here.)

\_\_\_\_\_  
(OWNER—SIGNATURE)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .

\_\_\_\_\_  
Notary Public—South Dakota

*Note: Add enough legal description areas, owner and notary information for all the petitioners (100% of properties abutting proposed vacation).*

I, (Person's name submitting petition printed here), have read the above "Petition to Vacate" and know its contents. It is true to the best of my knowledge.

\_\_\_\_\_  
(ADDRESS) (PETITIONER—SIGNATURE)

\_\_\_\_\_  
(TELEPHONE NUMBER) (E-MAIL ADDRESS) If available

State of \_\_\_\_\_ Subscribed and sworn to before me County of \_\_\_\_\_  
\_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ .  
\_\_\_\_\_

\_\_\_\_\_  
Notary Public—South Dakota

I would like the City of Sturgis to remove the easement from the proposed vacated right-of-way with the resolution.

(If checked – all utility companies must be contacted concerning proposed right-of-way vacation and any conflicts must be resolved prior to submitting petition.)

*Sample Letter to Utilities*  
*(contact the Planning & Zoning office if you need a current list)*

*(Date)*

To: *Utility Company Representative*

We are requesting the City of Sturgis vacate the street/alley right-of-way identified (on The attached exhibit) or (description of proposed vacated right-of-way). When vacating a street/alley, the City reserves the entire right-of-way as an easement if no request has been made to remove the easement. Please review the (enclosed exhibit) or (description of proposed vacated right-of-way). If you have facilities that are located within the right-of-way that must remain there, please let us know so a new easement can be created or the utility can be relocated. If you do not have, nor plan on having facilities located within this right-of-way, please let us know also. All costs associated with easement drawings and/or facility relocation will be the responsibility of the petitioner.

Please return this form by fax or email to our address after furnishing the requested information. If you have any questions or concerns about the proposed vacation, please contact us.

Thank you for your assistance.

Name of Utility Company: \_\_\_\_\_

Utility Contact Person: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

We have no facilities in the proposed vacated right-of-way.

We need to maintain an easement for our facilities in the current location.

Arrangements need to be made for relocation of our facilities.

Utility Contact: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Comments: \_\_\_\_\_

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Attach separate sheet for additional comments:

Please return to: *(Petitioner's name or contact person)*

*(Address)*

*(Telephone Number)*

(Fax)

(Contact Email Address)

## **Right-of-Way Vacation Check List**

### **Petition:**

- Petition completed with correct owners and legal descriptions
- Petition signed by all owners of adjacent properties
- Testament completed by petitioner including name, address, telephone number and email address

### **Release of easement (If applicable):**

- All utilities contacted
- Comments/concerns received from all contacted utilities
- Petitioner addressed concerns, relocations, easements, etc with utilities

### **Documentation required for processing petition by City:**

- Original signed petition
- Utility comment sheets and resolutions to any conflicts (If applicable)
- Map/Exhibits for proposed vacation
- Filing Fee - \$250.00

### **Important Dates:**

Date turned into City Community Development Office Date: \_\_\_\_\_

Planning Commission Review (Petitioner must be present) Date: \_\_\_\_\_

First Reading (Council sets hearing date) Date: \_\_\_\_\_

Date of Public Hearing (Petitioner must be present at Council meeting) Date: \_\_\_\_\_

Date of Publication - after Hearing Date: \_\_\_\_\_

Date vacation becomes effective - 20 days after date of publication. Date: \_\_\_\_\_