

ARTICLE IV. VACATING STREETS, ALLEYS OR PUBLIC GROUNDS

Sec. 94-171. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alley means a minor thoroughfare, under the jurisdiction and control of the city, open to public use, for the purpose of ingress and egress to service adjacent buildings or property.

Public ground means any real property or interest therein owned or possessed by the city, other than an alley or a street.

Public utility means any person, municipal department, board or commission duly authorized to furnish and furnishing to the public, under federal, state or municipal regulations, gas, steam, electricity, sewage disposal, communication, telegraph, transportation or water.

Street means the entire width between boundary lines of every way, other than an alley, that is publicly maintained and under the jurisdiction and control of the city, when any part thereof is open or may be open to the use of the public for purposes of vehicular travel.

(Code 1976, § 4-10.02)

Cross references: Definitions generally, § 1-2.

Sec. 94-172. Purpose.

As it is occasionally necessary for the health, welfare, comfort and safety of the people of the city to vacate, discontinue or abolish an existing street, alley, public ground, or part thereof, a procedure is established as provided in this article.

(Code 1976, § 4-10.01)

Sec. 94-173. Request for vacation of public property.

(a) *Submission of application and fee.* A property owner whose property abuts a street, alley, or public ground may request that such street, alley, public ground or part thereof be vacated by submitting an application to the department of public service. Such application shall describe the street, alley, public ground, or part thereof to which the application applies; the name of the abutting property owner; and a description of his property. The application shall be accompanied by a fee as provided in section 54-681.

(b) *Review.* Upon receipt of an application for vacation, the department of public service shall review the application and shall submit the application to the city council with any objections the department may have to such vacation. If there is any current or possible future use of the area proposed to be vacated for utilities, access or similar purposes, the department shall report any easements that should be retained by the city in the street, alley, public ground, or part thereof in case of vacation.

(Code 1976, § 4-10.03; Ord. No. 410, § 1(1-08.02.18), 3-19-1997)

Sec. 94-174. Preliminary resolution of city council.

(a) *Declaration of intent.* Whenever the city council shall deem it advisable to vacate, discontinue or abolish any street, alley, public ground, or part thereof, the city council shall, by resolution, declare its intention to vacate, discontinue, or abolish the street, alley, public ground, or any part thereof.

(b) *Public hearing.* In the declaration of intent, the city council shall schedule a time

and place for the city council to meet and hold a public hearing to hear and consider comments and objections submitted in writing or orally pertaining to the proposed vacation, discontinuance or abolition.

(Code 1976, § 4-10.04)

Sec. 94-175. Notice of public hearing.

(a) *Publication in newspaper.* At least ten days prior to the date of public hearing under this article, notice of the time, place and purpose of the public hearing shall be published in a newspaper of general circulation in the city.

(b) *Written notice.* In addition to the notice in subsection (a) of this section, notice shall also be given as follows:

(1) *Adjacent property owners.* Written notice shall be given either personally or by regular mail to the owners and occupants of all property abutting or located within 300 feet of such street, alley, public ground, or part thereof, as shown on the current assessment rolls of the city, if within the city, or of the municipality where the property is located, if not within the city.

(2) *Adjacent municipality.* Written notice shall be given to an adjacent municipality if any property located within that municipality is to be given notice of the hearing.

(3) *County and state officials; public utilities.* Written notice shall be provided at the same time and in the same manner to the following:

a. The state treasurer, the drain commissioner and the chairperson of the board of county road commissioners having jurisdiction over any abutting land or land included in an affected plat;

b. Each public utility known to have installations or equipment in abutting land or an affected subdivision or that has a recorded easement or franchise right that would be affected; and

c. The director of the state transportation department if any of the abutting land or affected subdivision includes or borders a state highway or federal aid road.

(Code 1976, § 4-10.05)

Sec. 94-176. Final resolution of city council.

(a) *Action to vacate, discontinue or abolish.* If, after the public hearing held under this article, the city council determines it is necessary for the health, welfare, comfort and safety of the people of the city to vacate, discontinue or abolish an existing street, alley, public ground, or part thereof, the city council shall so vacate, discontinue or abolish by resolution.

(b) *Reservation of easement.* In the same resolution, the city council may reserve an easement in the street, alley, or public ground for public utility purposes and other public purposes within the right-of-way of the street, alley, or public ground being vacated, discontinued or abolished.

(c) *Extinguishment of easement.* The city council may by resolution extinguish any such easement whenever the easement ceases to be useful for public utility purposes or other public purposes.

(Code 1976, § 4-10.06)

Sec. 94-177. Recording of resolution.

Whenever the city council by resolution vacates, discontinues or abolishes a street, alley, public ground, or part thereof, the city clerk shall, within 30 days, record a certified copy of the resolution with the county register of deeds and shall send a copy to the state treasurer. Until recorded, the resolution shall not have force or effect.

(Code 1976, § 4-10.07)

Sec. 94-178. Sites near bodies of water excluded.

No existing street, alley, public ground, or part thereof, which is located in a recorded subdivision and within 25 meters (82.021 feet) of a lake or the general course of a stream, and no street which is located outside of a subdivision and within five rods (82.500 feet) of a lake or the general course of a stream shall be vacated, discontinued or abolished, however, except by order of the circuit court pursuant to Public Act No. 288 of 1967 (MCL 560.255a, MSA 26.430 (255a)) and Public Act No. 341 of 1927 (MCL 247.41 et seq., MSA 9.51 et seq.).

(Code 1976, § 4-10.08)