

**June 2, 2013**

**To: Mayor Bemrich and City Council**

**From: David Fierke, City Manager**

**Subject: Right-of-Way Vacation**



---

**ACTION: Set Public Hearing for June 23, 2014 to consider request to vacate public right-of-way**

---

**Brief History**

Holy Trinity Parish is requesting vacation of the remaining portion of alley located west of what was previously the Phillips Middle School Gymnasium and east of North 10<sup>th</sup> Street between 4<sup>th</sup> Avenue North and 3<sup>rd</sup> Avenue North. See attached map. Holy Trinity is currently in the process of purchasing the abutting property and would like to acquire the vacated alley as a part of their property. The Parish intends to use the vacated alley as a driveway to a proposed private parking area. The area proposed for vacation is not used for through access, as the east half of the alley was vacated through Ordinance 1166 in 1960.

**Analysis of Issue**

When analyzing requests for the vacation of public rights-of-way, City Staff considers the following:

- **abutting property owners' access**, support and other impacts;
- parking and transportation;
- liability, safety and maintenance;
- existing or proposed utilities and potential city improvement projects; and
- **consistency with the City's Land Use Plan.**

*Abutting Property Owner Access & Support*

The alley proposed for vacation is adjacent to lands owned by the Fort Dodge Community School District, which is currently under contract to be sold to Holy Trinity Parish. If the sale proceeds, Holy Trinity Parish wishes to have the vacated alley disposed to them and used as part of the neighboring property. Under its previous use, the alley was blocked off to the public by a chain link fence. The north half of the alley was paved for basketball courts and the south portion was graveled as part of the track.

**Holy Trinity is proposing to use the existing alley's curb cut for vehicular access to the existing basketball courts, which will be converted into a private parking area for use of the gymnasium and field.** Holy Trinity anticipates that the fence will be replaced with a closeable gate, to be opened for use of the gymnasium and field.

### *Transportation & Parking Impacts*

No transportation impacts are anticipated, as the alley proposed for vacation has not been used for through access since before the **1960's**. **There are also limited impacts** to parking upon the vacation of the alley, as the area proposed for vacation is currently not accessible to the public for use of parking.

### *Liability, Safety & Maintenance*

Liability and safety are common concerns for emergency response. By establishing a **"no parking" area** along the south/east entrance to the gymnasium, concerns for emergency response will be mitigated. Holy Trinity will be responsible for any necessary repairs to the vacated alley access, including the driveway apron, proposed vehicular access and snow removal of such areas. City snow removal services are not currently provided for the area proposed for vacation. Garbage pick-up will require no adjustments.

### *Utilities and City Improvement Projects*

According to Ordinance number 1166, which vacated the east portion of the alley, the City retained full rights in the vacated property for the services of its utilities located therein and the existing rights of any private utility company now using the alley. A notice was sent out to all public and private Utility Departments for their review of the proposed vacation. Staff is awaiting comments from each Department and will address said comments prior to the Plan and Zoning Commission Meeting (June 10<sup>th</sup>) and Council public hearing.

No City improvement projects are currently planned for this site.

### *Land Use*

The **City's** Land Use Plan guides this area for Public use. The adjacent property is currently zoned Multiple Family Residential (2RM), which requires a Special Exception for use by a private school. Holy Trinity has obtained a Special Exception from the Board of Adjustment to allow use of the alley by St. Edmond Catholic School, upon vacation and disposition. The Special Exception includes the allowance to make improvements to the driveway apron and access drive, and potential changes to the existing fencing to include a gate for access, all of which will require submission of a Site Plan to be approved by the City. The proposed changes are allowed uses within the 2RM district. The proposed parking area is consistent with surrounding uses, which currently consist of multiple family and single family dwellings.

Upon obtaining all necessary easements for any utilities that may exist within the area proposed for vacation, no negative impacts are foreseen in relation to abutting properties; parking and transportation; liability, safety and maintenance; utilities and city improvement projects; or land use.

### **Budget Impact**

Right-of-way vacation requests do not typically entail any City expenditures.

**Strategic Plan Impact**

N/A

**Existing Plan Impact**

N/A

**Subcommittee or Commission Review / Recommendation**

The Plan & Zoning Commission will consider this request for vacation at their regular meeting on June 10, 2014. The Commission will provide their recommendation to the City Council upon review of this request for vacation, which should be prior to the public hearing.

**Staff Conclusions / Recommendations**

Subject to City Council review, and comments received at the public hearing, Staff recommends approving the public right-of-way vacation request, provided all necessary easements for any utilities that may exist within the area are established prior to disposition of the property.

**Alternatives**

The alternative would be to deny the right-of-way vacation request, which would result in the area being maintained as public right-of-way. Denying the request may prevent Holy Trinity from using the area for access to a proposed parking area.

**Implementation and Accountability**

If the vacation request is ultimately approved, the public right-of-way will be disposed to the abutting property owners and any necessary easements for utilities will be established.

Signed

---

Carissa Miller  
Associate Planner  
Department of Business Affairs &  
Community Growth

Approved

---

David R. Fierke  
City Manager

# Request for Vacation of Alley - Holy Trinity

Plan and Zoning Commission Case 2201.14



40 20 0 40 Feet

Map created 6/2/14

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION PROPOSING VACATION OF PUBLIC RIGHT-OF-WAY  
AND AFFIXING A DATE FOR A PUBLIC HEARING**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE,  
IOWA:

That the City Council of the City of Fort Dodge, Iowa, hereby proposes to vacate  
the following public right-of-way located in Webster County, Iowa, described as  
follows:

THAT PORTION OF ALLEY WHICH EXTENDS FROM NORTH  
10<sup>TH</sup> STREET EASTERLY AND INCLUDES ALL OF SAID ALLEY  
WHICH ABUTS LOTS FIVE (5), FOUR (4), TEN (10) AND NINE  
(9) IN SAID BLOCK 25, EAST FORT DODGE ADDITION TO  
FORT DODGE, WEBSTER COUNTY, IOWA.

A public hearing will be held on the 23<sup>rd</sup> day of June, 2014 AD, at 6:00 p.m. in  
the Council Chambers of the Municipal Building, 819 1<sup>st</sup> Avenue South, Fort  
Dodge, Iowa, at which time the Council will hear objections to the vacation of  
said public right-of-way.

The City Clerk is hereby directed to publish notice of said hearing, as by law  
required.

Passed and approved by the City Council of the City of Fort Dodge, Iowa, this  
9<sup>th</sup> day of June, 2014, AD.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

CITY OF FORT DODGE

BY: \_\_\_\_\_

Matt Bemrich, Mayor

ATTEST:

\_\_\_\_\_  
Jeff Nemmers, City Clerk

Prepared by Carissa Miller, 819 1<sup>st</sup> Ave. South, Fort Dodge, Iowa 50501, 515-573-8321.  
Return to Business Affairs & Comm. Growth, 819 1<sup>st</sup> Ave. South, Fort Dodge, Iowa 50501

**ORDINANCE NO. \_\_\_\_\_**

**ORDINANCE PROVIDING FOR THE VACATION OF PUBLIC RIGHT-OF-WAY  
CITY OF FORT DODGE, WEBSTER COUNTY, IOWA**

BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA:

**SECTION I. PURPOSE.**

The purpose of this Ordinance is to vacate that portion of public right-of-way located in Webster County, Iowa, described as follows:

THAT PORTION OF ALLEY WHICH EXTENDS FROM NORTH 10<sup>TH</sup> STREET EASTERLY AND INCLUDES ALL OF SAID ALLEY WHICH ABUTS LOTS FIVE (5), FOUR (4), TEN (10) AND NINE (9) IN SAID BLOCK 25, EAST FORT DODGE ADDITION TO FORT DODGE, WEBSTER COUNTY, IOWA.

**SECTION II.**

The City Council of the City of Fort Dodge, Iowa, hereby makes the following findings:

1. The proposed vacation of the above-described portion of public right-of-way does not negatively impact abutting property owners, parking, transportation, safety, public utilities, or land use;
2. upon vacation, the property will be disposed to the new neighboring property owner; and
3. easements will be established to allow for access and maintenance of all existing public and private utilities; and
4. the Public Notice of this intended vacation and the dates, time, and place on which the Council would first consider the vacating Ordinance has been heretofore published, as by law required.

**SECTION III.**

The public right-of-way, above described, is hereby declared vacated.

SECTION IV.

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION V.

If any Section, provision, or part of this Ordinance shall be adjudged invalid or unconstitutional, such adjudication shall not affect the validity of the Ordinance as a whole, or any Section, provision, or part thereof not adjudged invalid or unconstitutional.

SECTION VI.

This Ordinance shall be in effect after its final passage, approval, and publication, as by law provided. Passed and approved by the City Council of the City of Fort Dodge, Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, AD, 2014.

First consideration \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

Second consideration \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

Third consideration \_\_\_\_\_ day of \_\_\_\_\_ 2014.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Other: \_\_\_\_\_

(City Seal)

CITY OF FORT DODGE

BY: \_\_\_\_\_  
Matt Bemrich, Mayor

ATTEST:

\_\_\_\_\_  
Jeff Nemmers, City Clerk

STATE OF IOWA, WEBSTER COUNTY, ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared Matt Bemrich and Jeff Nemmers to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of said corporation, that the seal affixed thereto is the seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its City Council; and that the said Mayor and City Clerk as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
Dawn M. Siebken, Notary Public