

**June 2, 2014**

**To: Mayor Bemrich and City Council**

**From: David Fierke, City Manager**

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



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**ACTION: For vote - a) Resolution revising Right-of-Way Vacation Application Fees  
b) Resolution adopting Right-of-Way Vacation Policy**

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**Brief History**

The City has a particular process for considering Right-Of-Way (ROW) vacation requests; however, no guidance is currently available to ensure a consistent process for review is followed. The enclosed document, **titled "Policy and Procedures for Vacating Public Right-Of-Way"**, has been developed to ensure steps are clear to City staff, the public, and each City Department, Commission and Council involved in the ROW vacation process. The Policy includes procedures for submission of the application, review of the application and disposition of vacated lands.

In establishing a policy, it was recommended by the City that staff also consider alternatives for application fees and disposition costs. Each of these items has been presented and discussed with the City Council in a Workshop on April 28, 2014 and the Plan and Zoning Commission during their regular meetings on May 13, 2014 and May 27, 2014.

**Analysis of Issue**

Without a policy on ROW vacation procedures, certain steps in the application, review or disposition could be overlooked. The attached policy was devised using Right-of-Way Vacation Policies from various Cities, and input from various City Departments, Plan and Zoning Commission, and City Council. Each section identifies steps and considerations that should be followed for requested ROW vacations. Public Works and Engineering were asked to give some insight as to the guidelines that should be used to analyze ROW vacation requests; additional resources used to establish these guidelines were existing City procedures and other Cities' procedures.

Upon developing the ROW Vacation Policy, it was recommended that staff look into the application fees of such requests **and how other City's consider disposition of vacated lands**. Based on online information, Right-of-way vacation application fees in various Iowa Cities ranged anywhere from \$100-\$400. In addition to this, other City of Fort Dodge requests including rezonings, variances, special exceptions and subdivisions range anywhere from \$200-\$300 and all require a similar process of review and notice

as the ROW vacation process. The ROW application fee covers department and utility notifications, adjacent property notifications, staff review and report, notification of public hearing, legal fees, disposition preparation, and, a cost that was not previously covered within the existing application process, all recording fees. Based on these findings, staff recommends that the existing application fee be increased from the existing \$50 application fee to a \$200 application fee. **This proposed increase in 'user fee' ensures that the applicant** is covering the cost of the ROW vacation, instead of the general public.

Further, staff was advised to consider sales price for disposition of vacated lands and present these to the Council and Plan and Zoning Commission. The sales price for dispositions were split into disposition of alleys versus disposition of streets and other lands. The alternatives for disposition prices were established based on the sales prices other Cities used. These alternatives included (but were not limited to):

1. Charge no sale price for disposition of vacated alleys/other lands
2. Charge no sale price for one disposition for alleys; however, if being split into two or more portions, any recording fees or legal fees will be assessed to the property owner.
3. Establish a set sale price per portion disposed
4. Determine a sale price based on certain amount per square foot (assessed value)
5. Establish a sale price based on appraisal

Staff recommended determining a sale price for alleys, and streets and other lands differently. This would include charging no sale price for the disposition of vacated alleys; however, for the disposition of 2 or more portions of a vacated alley assessing any applicable legal and recording fees to the property owners obtaining ownership of the disposed lands. This alternative encourages commercial development and the vacation of unused alleys, and mitigates disposition of vacated alleys in a **"checkerboard"** fashion due to high disposition costs, which would result in disinterest of residents.

For disposition of vacated streets and other lands, staff recommends determining a sale price based on an established cost per square foot, which should be determined using adjacent or nearby assessed land values (per square foot). This ensures the City is being properly reimbursed for its land.

All proposed Right-of-Way vacations and the disposition of such will be reviewed by the City Council.

### **Budget Impact**

No City expenditures are anticipated. Staff proposes an application fee of \$200 to ensure the applicant covers all costs relating to department and utility notifications, adjacent property notifications, staff review and report, notification of public hearing, attorney fees, disposition preparation, and recording fees. Staff further recommends charging no sale price for the disposition of vacated alleys; however, for the disposition of 2 or more portions of a vacated alley assessing any applicable legal and recording

fees to the property owners obtaining ownership of a portion of the disposed alley; and determining a sale price of vacated streets and other lands based on an established cost per square foot, which should be determined using adjacent or nearby assessed land values (per square foot).

### **Strategic Plan Impact**

This action is relates to the following policy, as the Policy establishes review criteria, which will help the Plan and Zoning Commission and City Council review requested vacations of existing streets and alleys:

Policy D.4.2: Advanced planning for all infrastructure facilities shall be supported and routinely updated. Facilities benefited by advanced planning shall include, at minimum, schools, health care, residential areas, roads, water, sewer, storm water management, parks, recreation, and greenways.

### **Subcommittee or Commission Review / Recommendation**

The Plan and Zoning Commission reviewed this proposal at their May 13<sup>th</sup> and 27<sup>th</sup> 2014 meetings. They support this proposal and its goals. The Plan and Zoning Commission does not support charging \$200 application fee, but rather recommends a \$100 application fee. The Commission noted that increasing the application fee from \$50 to \$200 is too substantial of an increase.

Further, the Commission recommends approval of the **"Policy and Procedures for Vacating Public Right-Of-Way"**, with the recommended application fee of \$100 reflected in the text of the document.

### **Staff Conclusions / Recommendations**

Subject to Council discussion and public comment, Staff recommends approval of the resolution to increase the Right-of-Way Vacation Application Fee to \$200.

Further, subject to Council discussion and public comment, Staff recommends approval of the resolution adopting the **"Policy and Procedures for Vacating Public Right-Of-Way"**, which requires:

- A \$200 Right-of-Way Vacation Application fee; and
- no sale price for the disposition of vacated alleys, unless disposition consists of 2 or more portions, at which point any recording or legal fees would be assessed to the property owners wishing to have a portion(s) of the vacated alley conveyed to them; and
- a sale price for the disposition of Streets and other lands to be established based on neighboring lands assessed values
  - any improvements to disposed streets and other lands may incur a reduction or reimbursement in disposition costs to the property owner.

## **Alternatives**

The first alternative is to approve the proposed resolution revising the right-of-way vacation application fee to \$200, and approve the proposed resolution adopting the **"Policy and Procedures for Vacating Public Right-Of-Way"**; which would put all applicable fees and policies in effect. A second alternative is to table the proposed resolutions, which would delay the application fee and policies from taking effect. Another alternative is to reject the resolutions, which would result in no change to the application fee and establish no policy for right-of-way vacations and disposition of such.

## **Implementation and Accountability**

If the Council approves the resolution revising the right-of-way vacation application fee and the resolution adopting the **"Policy and Procedures for Vacating Public Right-Of-Way"**, staff will begin implementing all applicable changes to the right-of-way vacation process.

Signed



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Carissa Miller  
Associate Planner

Approved



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David R. Fierke  
City Manager

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

**RESOLUTION REVISING FEES FOR THE DEPARTMENT OF  
BUSINESS AFFAIRS AND COMMUNITY GROWTH**

WHEREAS, the City of Fort Dodge set fees for services administered by the Business Affairs and Community Growth, most recently by Resolution 13-04-061; and

WHEREAS, it is important for a local government to recover the costs associated with providing special benefits to individuals; and,

WHEREAS, the costs to the City of providing these special benefits will not be completely recouped with the adoption of the recommended fees; and

WHEREAS, the recommended fees are fair and adequate.

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

Section 1. That the fees for certain special benefits administered by the Department of Business Affairs and Community Growth shall be payable upon application for the special benefits and shall be nonrefundable regardless of application outcome or project completion.

Section 2. That Resolution 13-04-061 is hereby rescinded.

Section 3. The fees shall be as follows:

Business Enterprise Zone Benefits	\$ 200.00
Housing Enterprise Zone Benefits	\$ 100.00
Rezoning	\$ 250.00
Sidewalk café or sidewalk retail	
Display and sales	\$ 100.00
Site Plan Review	
Administrative	\$ 50.00
Minor	\$ 150.00
Major	\$ 300.00
Special Exception	\$ 200.00
Subdivision	\$ 300.00
Temporary sign permit	\$ 50.00
Variance	\$ 200.00

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA,  
THIS \_\_\_ DAY OF \_\_\_, 2014.

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

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

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

CITY OF FORT DODGE

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

ATTEST:

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

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

**A RESOLUTION ADOPTING POLICY AND PROCEDURES FOR VACATION PUBLIC RIGHT-OF-WAY IN THE CITY OF FORT DODGE, IOWA**

WHEREAS, the City Council of the City of Fort Dodge, Iowa finds that right-of-way vacation requests occur on a regular basis within the City of Fort Dodge, in Webster County, Iowa; and

WHEREAS, the City Council of the City of Fort Dodge, Iowa believes that it is in the City's best interest to establish an adequate and clear policy for review of proposed right-of-way vacations and disposition of such; and

WHEREAS, the City Council of the City of Fort Dodge, Iowa finds that said policy should include procedures on the right-of-way vacation application, review of right-of-way vacation requests and disposition of vacated lands; and

WHEREAS, the City Council of the City of Fort Dodge, Iowa believes that no sales price for the disposition of vacated alleys should be charged except where a disposition of a vacated alley results in a split of 2 or more portions, in which case any pertinent legal and recording fees should be assessed to the appropriate property owners whom obtain ownership of the vacated and disposed alley; and

WHEREAS, the City Council of the City of Fort Dodge, Iowa believes that a sales price equal to the assessed value per square foot of adjacent or nearby property should be charged for the disposition of vacated streets and other lands; and

WHEREAS, the City Council of the City of Fort Dodge, Iowa finds that improvements to disposed streets and other lands may result in a reduction or reimbursement in disposition costs to the property owner.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Fort Dodge, Iowa that the policy set out in the enclosed "Policy and Procedures for Vacating Public Right-of-Way" is hereby adopted in its entirety and shall be the policy of this City until amended or repealed by this Council.

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FORT DODGE, IOWA, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

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

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

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

(City Seal)

CITY OF FORT DODGE

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

ATTEST:

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

# POLICY AND PROCEDURES FOR VACATING PUBLIC RIGHT-OF-WAY

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Adopted by the City Council of Fort Dodge, Iowa on \_\_\_\_\_, 2014 by  
Resolution \_\_\_\_\_

PREPARED BY:

BUSINESS AFFAIRS AND COMMUNITY GROWTH  
CITY OF FORT DODGE  
819 1<sup>ST</sup> AVENUE SOUTH  
FORT DODGE, IA 50501

## **Section I – Background**

### **Authority**

Chapter 354.23 of the Iowa Code permits a city to vacate part of an official plat that has been conveyed to the city or dedicated to the public (public right-of-way), which is deemed by the governing body to be of no benefit to the public. Upon vacation of the public right-of-way, the City may convey the property to adjoining proprietors by quit claim deed.

### **Purpose**

This policy has been created to assist residents, City Staff, the City Plan and Zoning Commission and the City Council in reviewing requests for vacation of alleys, streets and other rights-of-way. This policy implements the following objectives:

1. To provide due process and citizen participation in the application and review process for vacations.
2. To ensure that no adjoining property owner is deprived of required and reasonable access.
3. To reduce or eliminate hazardous and dangerous traffic conditions.
4. To maintain appropriate right-of-way widths to ensure that an adequate pedestrian and vehicular circulation system is retained.
5. To protect all existing and proposed public utilities located in the right-of-way and to maintain necessary utility easements.
6. To ensure proper planning for the vacation of portions of existing alleys, streets or other right-of-ways.
7. To assist in the implementation of the goals and objectives of the Comprehensive Plan.

## **Section II – Application Process**

### **Application**

Requests for vacation of an alley, street, and other right-of-way are to be submitted to the Business Affairs and Community Growth Department, along with the required fee as set forth in the RESOLUTION REVISING FEES FOR THE DEPARTMENT OF BUSINESS AFFAIRS AND COMMUNITY GROWTH, adopted by the City Council. All requests for vacation shall require the completion of an application, which shall provide sufficient information for review. The application can be obtained from the Business Affairs and Community Growth Department. A preliminary meeting to discuss the application and process may be scheduled with Planning Staff.



## Section III – Review Process

### Department and Utility Notification

Upon receipt of the completed application and all necessary attachments, Planning Staff in the Business Affairs and Community Growth Department shall establish a file with a case number, schedule the request for review at the next scheduled Plan and Zoning Commission meeting, and notify appropriate City Departments and Utilities for comment.

### Guidelines

All applications for right-of-way vacations will be reviewed by the Business Affairs and Community Growth Department and Plan and Plan and Zoning Commission using the following criteria:

1. Abutting Property Owners
  - a. Will any abutting property owners be deprived of required and reasonable access
  - b. Do abutting property owners support or reject the request?
  - c. If applicable, do abutting property owners agree to accept or purchase the vacated property?
2. Transportation and Parking Impacts
  - a. Will the vacation have negative impacts on parking, traffic, or pedestrian or vehicular circulation?
3. Liability Safety and Maintenance
  - a. Will any potential liability to the City in the form of damages, injury, and/or maintenance be reduced or eliminated?
4. Utilities and City Improvements
  - a. Do utilities exist within the property requested for vacation?
  - b. If utilities do exist, are easements acceptable to ensure future maintenance and/or replacement?
  - c. Is the alley, street, or right-of-way being requested for vacation identified by any city improvement project or adopted plan?
5. Dead Ends
  - a. Will approval of the request create, reduce, or eliminate a dead-end alley, street or right-of-way?
  - b. If the proposed vacation will create a dead-end alley, street or right-of-way will it have any negative impacts relating to drainage, snow removal, garbage, access or others?
6. Land Use Plan
  - a. Is the vacation request consistent with goals and objectives in the City's Comprehensive Plan?

### Property Owner Notification

Planning Staff in the Business Affairs and Community Growth Department shall notify all title holders and contract purchasers of land abutting the requested vacation. This notification will be in the form of a letter and a petition inquiring about their support of the vacation and interest in acquiring the right-of-way abutting their property. This written notification shall include a location map and legal description of the requested vacation, and the time and place of the Plan and Zoning Commission meeting discussing the request. All returned petitions shall be maintained in the appropriate case file.

### Report Preparation

Upon receipt of department and utility comments, property owner petitions and review of the above mentioned guidelines, a staff report is to be prepared by Planning Staff in the Business Affairs and Community Growth Department. This staff report must include general information on the request, all comments from departments, utilities and property owners; as well as a review of the above-mentioned guidelines. Based on this information, Planning Staff will develop a recommendation for Plan and Zoning Commission and City Council consideration. All staff reports shall be forwarded to the applicant and Plan and Zoning Commission members prior to the Plan and Zoning Commission meeting.

### Plan and Zoning Commission Review

The request for vacation will be reviewed by the Plan and Zoning Commission at their next scheduled meeting, if submitted within the Plan and Zoning deadline for such meeting. At this meeting the Commission will consider Staff comments provided in the staff report, which are based on the above guidelines and public comment. Upon hearing all comments in favor and/or against the request, the Plan and Zoning Commission shall formulate a recommendation to the City Council.

## **Section IV – City Council Review**

### City Council Public Hearing

Upon obtaining a Plan and Zoning Commission recommendation, Planning Staff shall incorporate the recommendation into a City Council staff report and prepare a resolution of public hearing, legal notification and ordinance; such documents will be forwarded to the City Clerk to set a public hearing at the next regularly scheduled City Council meeting for the subsequent meeting.

### Applicant and Public Participation

The most recently adopted rules of procedure shall govern the conduct of public hearings held before the City Council. These procedures are hereby made part of this City by reference.

## City Council Decision

At the scheduled public hearing, the Mayor or his/her designee will open the public hearing to receive all public input. Upon hearing all comments in favor and against the request, the City Council will close the public hearing; at such time, the first reading of the ordinance will be heard and Council will provide their first of the three votes. Unless waived by City Council, two more readings and votes will be held at subsequent Council meetings. Upon the approval of all three readings or waiver of readings 2 and 3, the vacation is passed. The approved Ordinance shall then be recorded by City Staff. A stamped copy of the recorded document shall be maintained in the case file.

## **Section V – Disposition Procedures**

### Easements

#### *Property to be Disposed*

All existing or proposed utilities identified in the vacation review process shall be maintained through an easement or other acceptable agreement established between the proposed owner of the vacated property and the utility entity seeking such agreement. Copies of all necessary agreements shall be provided to the Business Affairs and Community Growth Department, with the Webster County Recorder's stamp, prior to disposition of the vacated lands. Such agreements shall be maintained in the pertinent case file.

#### *City Utilities*

If within the review process, City-owned utilities are found to be present or proposed, the City shall seek approval of an easement from the property owner. Such easement shall be reviewed by the City Attorney prior to obtaining property owner signatures. The easement shall be approved by the City Council and recorded by City Staff prior to disposition of the vacated lands. A copy of the easement with the Webster County Recorder's stamp shall be maintained in the pertinent case file.

#### *Property in Ownership of the City*

If ownership of the vacated area is retained by the City, all proposed easements shall be reviewed by the City Attorney. At the time of the third reading of the ordinance for vacation by City Council, the Council may also consider approval of all related easements, which shall be established prior to vacation. One copy of the easement(s) with the Webster County Recorder's stamp shall be maintained in the pertinent case file and one copy shall be provided to the Engineering Department.

### Disposition

Whenever Council vacates a Street, Alley or other Right-of-Way, adjacent property owners may have the option to acquire the portion of the vacated area that is adjacent to their property, up to the centerline of such vacation. If the adjacent property owners do not wish to acquire their portion of the vacation,

the property may be disposed to other neighboring property owners. If no neighboring property owners are interested in acquiring the vacated property, any person who expresses interest may acquire the vacated property.

At the time of the third reading and approval of the ordinance for vacation by the City Council, the Council may dispose of vacated property, so long as all necessary easements have been recorded. To dispose of vacated property, the Council shall consider resolution(s) approving a quit claim deed(s) to dispose of the vacated area. A groundwater hazard statement shall accompany each deed. Upon Council approval of disposition, the approved resolution(s), deed(s) and groundwater hazard statement(s) shall be recorded by City Staff at the Webster County Recorder's Office. A stamped copy of the recorded documents shall be maintained in the case file.

#### Disposition Costs

##### *Alleys*

No sales price will be charged for a single disposition of a vacated alley. For disposition of split alleys consisting of 2 or more portions, any pertinent legal and recording fees will be assessed to the appropriate property owners whom obtain ownership of the vacated and disposed lands.

##### *Streets and other lands*

The sale price of vacated streets and all other vacated property shall be based on the Fair Market Value, as determined by the City. A reduction in sales price may be considered based on the value of improvements made to the disposed property. Any improvements in the form of development will require a Site Plan Review.

#### **Section VI – Recording**

All ordinances, resolutions, City-obtained easements and deeds shall be provided to the Webster County Recorder for recording by City Staff. A copy of each document with the Recorder's stamp shall be maintained in the pertinent case file.