



Chapter 4 – Vacation Process

Purpose

Vacations are requested when a property owner wishes to change or alter the platted or recorded conditions of their property. An approved vacation cancels previously platted conditions such as easements, right-of-way (public street or alley), access control, setbacks and platting's text. The whole plat can also be vacated. The vacation process can also cancel dedications to the public by separate instrument that have been recorded for public easements, right-of-way, covenants, access control and setbacks. The owner of the property where the proposed vacation is located must sign the vacation application form and the vacation petition.

Vacating easement

All utility providers (city or utility companies) must agree on the vacation of an easement for it to be vacated. It is common to have both public and private utility companies sharing an easement dedicated for public use. Check with the City Water Utilities Department or County Water and Sewer Department in reference to manholes and water and sewer lines. If a drainage easement or dedication is involved, check with the City or County Public Works and Storm Water Management at 268-4498 (City) or 383-7901 (County). Call 1-800-DIG-SAFE, for reference to utility companies and their utilities. If lines or equipment have to be relocated it will be at the applicant's expense and to City or County standards. Until utilities are moved no building permit will be issued.

Utility easements can be dedicated by plat or by separate instrument. Types of dedication by separate instrument include:

- (a) A dedication recorded with the Register of Deeds, which is the current method.
- (b) By ordinance, which is a method used in the past.

If the easement was dedicated by separate instrument, the applicant must provide the staff with a copy of the document as recorded with the Register of Deeds upon the filing of the vacation application.

Utility easements can also be by prescription. Easement by prescription recognizes utilities are present and in use although there is no recorded dedication of an easement. If easement is by prescription, there is no vacation involved.

An easement considered for vacation may be retained as a temporary easement until the utilities it covers are moved. The temporary easement shall contain a date that indicates the time when utilities will have been moved and the easement is no longer needed (i.e. it is now vacated). If dedication of a temporary easement is required, it should be accompanied by dedication of an easement to cover the relocated utilities.

Staff requires a copy of the recorded dedication of easements for private utility companies, if such dedication was a condition of approval for the vacation request. Easements can be vacated during

the replatting process. Qualifiers include the notification area, which is determined by the property(s) on which the easement is located. If located entirely on one property and not abutting any other property, then the easement can be vacated during the replatting of the property where it is located.

If utilities are moved or abandoned, a guarantee must be provided for the relocation or abandoning of utilities. The guarantee can be in the form of:

- (a) Letter of Credit
- (b) Personal Check
- (c) Performance Bond
- (d) Petition

The performance bond and the petition are typically applied to water, sewer, drainage and right-of way projects. The project contractor must submit performance bonds.

The letter of credit and personal check can be applied to water, sewer, drainage and right-of way projects, plus projects not involving public utilities or right-of way. Examples of projects these two guarantees would cover include closure of a private drive with the continuation of curb and gutter, replacement of landscaping, paving of parking or providing sidewalk. A letter of credit must contain a date of effectiveness, and a year date of effectiveness is suggested. At the end of the year, if the project has not been completed, the letter of credit must be re-issued/renewed. If it is not re-issued/renewed, the letter of credit is no longer valid and cannot be cashed.

If staff does not recommend vacating an easement the applicant may inquire about a hold harmless agreement with the City or the County. A hold harmless agreement typically relieves the City or the County of liability in regard to damage to

structures/development encroaching into an easement.

Vacating Public Right-of-Way (ROW)

Prior to filing for a vacation of public ROW the applicant is advised to contact the Traffic Engineer with the Public Works Department. If the Traffic Engineer does not recommend vacation, the application for vacation of ROW or access will not have staff support if the applicant chooses to proceed with the vacation.

To vacate public ROW it is advised the property owners abutting the public ROW proposed to be vacated, sign the petition and the application to vacate. If the application and the petition do not contain the signatures of all abutting landowners, the requested vacation will not have staff support. A written protest to the vacation by any of the abutting or adjacent landowners can prevent the vacation.

A vacation of public ROW cannot cause a dead-end. Access to an adjoining public ROW must be provided by dedication of access or ROW. Access is provided by dedication by separate instrument. This access must be located on the applicant's property. City staff may also determine if a 'hammer head' or cul-de-sac could provide turn-around space sufficient to meet access and public safety requirements.

A guarantee may be required to continue curb and sidewalk if a vacated ROW is no longer going to have access onto public ROW. If the vacated ROW is converted to a private drive, a guarantee may be required to ensure the entrance of the drive is constructed to City standards. A guarantee may be required if paving is necessary on the vacated ROW, by recommendation of the Public Works or Fire Departments.

Reversion of public ROW vacated property typically goes to the abutting landowners within the subdivision where it was dedicated. If an abutting property is not part of the subdivision where the public ROW was dedicated, the property owners may not have reversion rights. Final determination of reversion rights may be subject to review by the Law Department. Zoning of the abutting property(s) moves with the new property line created by the vacated ROW.

In some cases, it is advised the applicant investigate a possible minor street permit instead of vacation of public ROW. This application can be acquired from the Public Works Department and is a permit to allow private use in the public ROW. This permit is regularly reviewed by the Public Works Department and is terminated at their discretion. There is a yearly fee applied to the minor street permit as well as a filing fee. No structure can be built in a public ROW covered by a minor street permit.

Vacating Access Control

Prior to filing for a vacation of access control the applicant is advised to contact the City or County Traffic Engineer with the Public Works Department. If the Traffic Engineer does not recommend vacation, then the application for vacation of access control will not have staff support if the applicant chooses to proceed with the vacation. Considerations for vacation of access control include the City's and County's adopted access management standards and the adjacent and abutting platted and existing access around the subject site. A guarantee may be required to continue curb and sidewalk if a vacated access control closes another point of access onto public ROW.

Vacating Building Setbacks

When a public ROW is vacated the building setback based on the current Unified Zoning Codes automatically moves with the newly established property line. If it is a platted setback, it must be vacated and may be replaced with a setback per the Unified Zoning Code for the zoning district of the subject property. Replacement setbacks may also reflect abutting setbacks or the minimum setbacks required in a community unit plan. If vacation of the public ROW eliminates street frontage and joins two properties, the setback may become a current interior side setback. Easements located within setbacks that are vacated remain in effect unless they are also vacated.

Vacating Plator's Text and Plats

The language of the plator's text of a plat typically lists permitted uses within reserves or easements shown on the plat. Vacating the plator's text is typically used to allow additional uses within a reserve or an easement. Depending on the uses allowed by the plator's text the applicant would need to check with City or County Public Works and/or Water Utilities prior to making application to determine support. If not departmentally supported, the applications will not have MAPD support, which makes City Council approval less likely. Portions of a plat or the entire plat may also be vacated and the legal description of the formerly platted land becomes a metes and bounds description. A general observation of unplatted land is that a building permit cannot be obtained on that property if it is within the City of Wichita or if it less than 20-acres in the County.

Step 1- Application Process

Prior to submitting an application for a vacation, a pre-application meeting with the Metropolitan Area Planning Department (MAPD) is advised to determine the public and private entities with an interest in the proposed vacation. MAPD staff typically does not recommend approval of a vacation request if any of the entities with an interest oppose the vacation. The application form must be completed before it can be presented to the Metropolitan Area Planning Commission (MAPC). A vacation petition must accompany applications for vacation. Sample forms are available in the Planning Department. Applications shall be accompanied by a certified ownership list prepared by an abstract company giving the names and addresses, with zip codes, of property owners as specified below, and must also be accompanied by the signatures of all abutting property owners or their authorized agent.

Step 2- Fees

Applications for vacation must be accompanied by a filing fee in the amount of \$385.00 (make check payable to "City of Wichita"). Reprocessing of a vacation case must be accompanied by a filing fee in the amount of \$195.00. These fees are subject to change. Call 268-4494 for the most current fee rates.

Step 3- Plan Review

The applicant shall submit an accurate site plan. The site plan shall be drawn to scale and show the location of property lines, buildings, parking areas, driveways and other improvements or facilities that necessitate the variance. One 8.5" x 11" or 11" x 17" copy of the site plan shall be submitted. Other plans, drawings or information the MAPD deems necessary to enable proper consideration of request may be required.

Process Improvement Points

All spaces on a vacation application should be filled in or marked as "not applicable."

Mailing addresses on a certified ownership list submitted without zip codes will be returned to the applicant.

Completed vacation requests should be submitted to the Planning Department, City Hall – 10th Floor, 455 N. Main St., Wichita, KS 67202-1688.

Step 4- Public Hearing

The vacation request will be scheduled for public hearing by the Metropolitan Area Planning Commission. It will be scheduled for review and recommendation by the Subdivision Committee, usually one week prior to the Planning Commission hearing and placed on the agenda for consideration by the appropriate governing body until such time as all requirements made by the Planning Commission have been met by the applicant. If the zoning request is within another Sedgwick County city's area of zoning influence or subdivision jurisdiction that city's Council and Planning Commission will also have to consider the vacation request and make a recommendation prior to the Subdivision Committee and MAPD review.

In the event the applicant disagrees with the recommendation or a condition made by the Planning Commission, the vacation request may be appealed to the appropriate governing body. Per MAPC policy, all conditions are to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds. When a vacation case is in the County, but within the City's three-mile ring of zoning influence, the vacation case must go to the City Council for recommendation prior to it going to the County Commission for final action.

Process Improvement Points

Helpful Links Mentioned in this Chapter.

[MAPD](#)

[Planning Forms](#)

[Meeting Calendars](#)

WICHITA - SEDGWICK COUNTY VACATION PROCESS

(Process to be used for the vacation of street and alley rights-of-way, access controls, setbacks, drainage and utility easements)

