

VACATING STREETS, ALLEYS, AND EASEMENTS FOR PUBLIC USE GENERALLY

2019 Arkansas Code

Title 14 - Local Government

Subtitle 12 - Public Utilities Generally

Chapter 199 - General Provisions

Subchapter 1 - General Provisions

§ 14-199-103. Vacation of Public Utility Easements

Universal Citation: [AR Code § 14-199-103 \(2019\)](#)

- (a) Cities of first and second class and incorporated towns are given power and authority to vacate public utility easements or segments thereof, within such cities and towns under the conditions and in the manner provided for the vacation of streets and alleys by §§ 14-301-301 – 14-301-306.
- (b) A petition requesting the vacation of a public utility easement, signed by the property owners through whose property the easement extends shall be filed with the municipal legislative body and dealt with in the manner provided for by law.
- (c) Upon the adoption of an ordinance vacating a public utility easement, or a segment thereof, the ownership of the lot, block, or parcel of real property through which the easement extends shall cease to be burdened with the easement.
- (d) Nothing in this section shall be construed as empowering first-class and second-class cities and incorporated towns to vacate utility easements still in use or to vacate utility easements owned by utilities without just compensation therefor.
- (e) This section shall be cumulative to §§ 14-301-301 – 14-301-306.

2019 Arkansas Code
Title 14 – Local Government
Subtitle 18 – Roadways, Bridges, and Parking Generally
Chapter 301 – Municipal Streets Generally
Subchapter 3 – Vacating Streets and Alleys for Public Use Generally

§ 14-301-301 - Power and authority to vacate.

(a) Cities of the first and second class and incorporated towns are given power and authority to vacate public streets and alleys within the cities and towns under the conditions and in the manner herein provided.

(b) In all cases where the owner of property within a city or town shall have dedicated, or may hereafter dedicate, a portion of the property to the public use as streets or alleys by platting the property and causing the plat to be filed for record, as provided by law, and any street or alley, or section thereof, shown on the plat so filed shall not have been actually used by the public as a street or alley for a period of five (5) years and in all cases where all property abutting any street or alley, or section thereof, is owned by any educational institution or college, whether the property shall have been actually used by the public as a street or alley for a period of five (5) years or not, the city or town council shall have power to vacate and abandon the street or alley, or any portion thereof, by proceeding in the manner set forth in this subchapter.

§ 14-301-302 - Petition to vacate -- Notice of hearing.

(a) The owners of any property abutting upon a street or alley referred to in 14-301-301, may file a petition with the city or town council requesting the council to vacate the street or alley, or a portion thereof.

(b) The petition shall designate the street or alley, or a portion thereof, to be vacated, and there shall be filed with the petition a certified or photostatic copy of the portion of the plat filed in the office of the county recorder which shows the street or alley to be vacated, together with the lot and block numbers of each lot which abuts upon the street or alley to be vacated.

(c) At the next regular or special meeting of the council, the council shall, by resolution, fix a day for the hearing of the petition and shall direct the city clerk or town recorder to give notice of the meeting by publication once a week for two (2) consecutive weeks in some newspaper published in the county and having a general circulation in the city or town.

(d) The notice shall:

(1) State the names of the persons who sign the petition;

(2) State the name of the street or alley, or the portion thereof, to be vacated. If the street or alley is not named on the plat, the notice shall identify the street or alley by the abutting lot or block numbers; and

(3) Advise all persons that on a certain day named in the notice, the council will hear and determine whether the street or alley shall be vacated.

§ 14-301-303 - Hearing -- Written consent of abutting owners.

At the meeting of the council as designated in the notice, any property owner affected by the petition shall be heard. The council shall then determine whether, from the standpoint of public interest and welfare, the street or alley should be vacated as proposed in the petition. However, no street or alley, or any portion thereof, shall be abandoned or vacated unless there has been filed with the council the written consent of the owners of all lots abutting on the street or alley, or the portion thereof, to be vacated.

§ 14-301-304 - Ordinance vacating street or alley.

(a) If the council shall find by a majority vote of its members that the petition should be granted, either in whole or in part, the decision of the council shall be incorporated in an ordinance to that effect which shall be substantially as follows:

§ 14-301-305 - Suit to reject ordinance -- Evidence of consent.

(a) The determination, findings, and ordinance of the council shall be conclusive unless, within thirty (30) days after the passage of the ordinance, suit is brought to reject the ordinance in the chancery court of the county where the city or town is located.

(b) In determining whether all abutting property owners have consented to the abandonment, the council and chancery court shall be limited by the record of deeds in the office of the recorder of the county and shall not consider unrecorded instruments.

§ 14-301-306 - Ownership of street or alley vesting in abutting owners -- Pending suits unaffected.

(a) Upon the adoption of the ordinance, the absolute ownership of the property abandoned by the city or town shall vest in the owners of the real estate abutting thereon. Each such abutting owner shall take title to the center line of the street or alley so abandoned, and the ownership shall be free from the easement of the city or town for public use as a street or alley.

(b) This subchapter shall not affect suits now pending in any of the courts of this state.

CITY OF CENTERTON
Street, Alley, & Easement Right-of-Way Vacation
PROCEDURES & CHECKLIST

The process for vacating streets, alleys, and easements is set forth by:

- **State Statute Title 14, Subtitle 12, Chapter 199, Subchapter 1 § 14-199-103. Vacation of Public Utility Easements**
- **State Statute Title 14, Subtitle 18, Chapter 301, Subchapter 3 § 14-301-301 - Power and authority to vacate.**

I. FILE PETITION WITH CITY COUNCIL

- A. **Petition** to vacate street R.O.W., alley or easement signed by the property owners through whose property the easement extends. The petition shall state the names of the persons requesting the petition and state the legal description of the easement or portion of easement to be vacated. (Sample Petition on page 4.)
- B. A **copy of the plat** on record in the Circuit Clerk's Office which shows the street, alley and or easement to be vacated, together with the lot and block numbers of each lot which abuts upon the street or alley to be vacated.
- C. Provide a **Vacation Plat** that clearly illustrates and provides an accurate legal description of what is being requested to be vacated. Include the location of all easements and show existing utilities (Use One-Call).
- D. Provide a **list of abutting property owners** with an Abstractor's Certificate of Ownership that states the names and addresses of all owners of property abutting the street R.O.W, alley, or easement to be vacated. [Will accept property owner information obtained from the Benton County property records.]
- E. Submit completed **Vacation Application and Fee of \$150.00** to the City Planning Department.
- F. Submit **all the above** at least **21 days prior** to next available scheduled council meeting.

II. NOTICE OF HEARING

- A. At the next council meeting, the council shall by resolution prepared by the City (Sample Resolution on page 5) fix a day for the hearing of the petition and arrange for publication.
- B. City will publish notice of hearing in some newspaper published in the county and having a general circulation in the city or town at least once a week for two (2) consecutive weeks prior to hearing date. The petitioner will be responsible for the cost of publication.

- C. **City will prepare notice of hearing and forms, and return to the applicant, to be sent to the abutting property owners and utility companies.**
- D. City will prepare a **Notice of Hearing sign** for applicant to post on the property. Send a picture as proof of posting to planning@centertonar.us.
- E. City will send notice of public hearing and all relevant information to all utility companies affected by the request, along with a copy of the Utility Company Consent Form to be returned to the City.
- F. Petitioner will send by registered mail, notices of public hearing signed by the City, to all owners of property abutting street ROW, alley, or easement to be vacated; along with copy of petition, exhibit, and Adjacent Property Owner Consent Form.
- G. Provide to the City the **certified mail receipts** and signed **Affidavit of Mailing Notices** (form on Page 5 of this application)

III. HEARING – The following items are needed for council consideration:

- A. City will receive **certificate of publication** from the newspaper for record.
- B. Provide to City any **returned notices and USPS tracking status report** for all notices.
- C. Provide to the City the signed **Affidavit of Mailing Notices**.
- D. **Adjacent Property Owner Notification Forms** for Written consent of all owners of property abutting street R.O.W., alley, or easement to be vacated.
- E. **Utility Approval & Comment Forms** from all utility companies concerning the street R.O.W., alley or easement to be vacated and its relationship to existing or planned utilities with recommendations as to what action should be taken.

IV. ORDINANCE

1. Following the public hearing, the Council will consider the adoption of the ordinance to vacate the public easement/ROW, which will include the exhibit or a vacation plat with description as prepared by the applicant.
2. After the ordinance has been approved by the City Council, it will be filed for recording at the Benton County Circuit Clerk's Office along with any replat of the lot/lots. Applicant is responsible for recording costs.

Sample Petition

PETITION TO VACATE AN ALLEY LOCATED IN BLOCK 1, DUNCAN'S ADDITION, CITY OF CENTERTON, ARKANSAS

To: The Centerton City Council
The Centerton Planning Commission

We, the undersigned, being all the owners of the real estate abutting the alley hereinafter sought to be abandoned and vacated, lying in Block 1, Duncan's Addition to the city of Centerton, Arkansas, a municipal corporation, petition to vacate an alley which is described as follows:

(Legal Description)

That the abutting real estate affected by said abandonment of the alley are Lots 3 and 4 block 1 and Lots 5 and 6 Block 2, Duncan's Addition to the City of Centerton, Arkansas, a certified copy of the original plat located in the Circuit Clerk's Office for the County of Benton, State of Arkansas, is attached hereto, marked Exhibit A, and made a part hereof as though set out herein word for word.

Petitioners state that the above described real estate is not open and has not been used by the public for a period of many years, and that the public interest and welfare would not be adversely affected by the abandonment of the portion of the above described alley.

The petitioners pray that the City of Centerton, Arkansas, abandoned and vacate the above described real estate, subject, however, to the existing utility easements and sewer easements as required, and that the above described real estate be used for their respective benefit and purpose as now approved by law.

The petitioners further pray that the above described real estate be vested in the abutting property owners as provided by law.

WHEREFORE, the undersigned petitioners respectfully pray that the governing body of the City of Centerton, Arkansas, abandon and vacate the above described real estate, subject to said utility and sewer easements, and that title to said real estate sought to be abandoned be vested in the abutting property owners as provided by law, and as to that particular land the owner be free from the easements of the public for the use of said alley.

Dated this _____ day of _____, 20__.

Print Name of Petitioner

Signature of Petitioner

CITY OF CENTERTON
Planning Department

AFFIDAVIT of MAILING NOTICES
For Vacation of Public ROW/Alleys/Easements

I, _____, [Printed Name of Person and/or Company], acting as agent/owner, hereby certify that I have provided notice to affected parties in accordance with the requirements set forth in the instruction given with the City of Centerton regarding Public ROW/Alley/Easement Vacation Application & Procedures; and that the notice information provided is to the best of my knowledge true and factual. I am hereby enclosing the following supporting documents:

- List of property owners including Property Addresses, Names, Addresses, PID #'s, etc., of persons to be notified surrounding the property affected by this Vacation Application; [NOTE: This list should be provided with application]
- Copies of the notice and any attachments mailed;
- All certified mailing receipts;
- Delivery status per the USPS tracking website;
- Returned notices that were undeliverable; and
- Notarized proof of publication (unless published by City).

Printed Name

Signature: Property Owner/Authorized Agent

Date